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ARGUMENT OF
EVERETT W. BURDETT, ESQ.,
AND
REPORT OF SPECIAL COMMITTEE
ON
RELATIONS OF STREET RAILWAY AND MUNICIPAL CORPORATIONS.

1897-8

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ARGUMENT

OF

EVERETT W. BURDETT, Esq.,

FOR THE

MASSACHUSETTS STREET RAILWAY ASSOCIATION,

BEFORE THE

SPECIAL COMMITTEE APPOINTED BY THE GOVERNOR

TO INVESTIGATE AND REPORT UPON THE RELATIONS OF STREET RAILWAY AND MUNICIPAL CORPORATIONS IN MASSACHUSETTS, AND TO RECOMMEND LEGISLATION RELATIVE THERETO.

Delivered at the State House, Boston,
December 3, 1897.

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MEMBERS OF THE COMMITTEE.

Hon. CHARLES FRANCIS ADAMS, of Lincoln, *Chairman.*
Hon. WILLIAM W. CRAPO, of New Bedford.
Hon. ELIHU B. HAYES, of Lynn.
WALTER S. ALLEN, of New Bedford, *Clerk.*

Extracts from Chapter 509 of the Acts of 1897.

SECTION 1. The Governor, with the advice and consent of the Council, shall, within thirty days after the passage of this act, appoint a committee of three suitable persons, one of whom he shall designate as chairman, to investigate the subject of the relations between cities and towns and street railway corporations, the taxation of street railways and their franchises in this Commonwealth and in other states and countries, and the need, if any, of legislation in this Commonwealth to establish a more fixed tenure of franchises of street railways, and an equitable method of taxing the same.

SECT. 4. Said committee shall complete its investigation on or before the first day of January in the year 1898, and shall report the result thereof, in print, to the General Court, on or before the first Wednesday in February in said year. If said committee recommends any legislation, it shall accompany its report with drafts of such bills as are necessary to carry such recommendations into effect. The powers of said committee shall terminate on said first Wednesday in February.

ARGUMENT OF EVERETT W. BURDETT, Esq.,

BEFORE THE

SPECIAL COMMITTEE ON RELATIONS OF STREET RAILWAY AND MUNICIPAL CORPORATIONS.

December 3, 1897.

Mr. Chairman and Gentlemen: By chapter 509 of the Acts of 1897 the Governor was authorized to appoint a committee of three suitable persons "to investigate the subject of the relations between cities and towns and street railway corporations, the taxation of street railways and their franchises in this Commonwealth and in other states and countries, and the need, if any, of legislation in this Commonwealth to establish a more fixed tenure of franchises of street railways, and an equitable method of taxing the same." Pursuant to that act, the Governor appointed this Committee, which, on its own account, has made investigations in this and other states and in foreign countries, and has given hearings to municipal officers, street railway companies, and all other persons interested. It now becomes my privilege to close the case in behalf of the street railway corporations. I regret that the time at my disposal since the hearings closed has not been as ample as I would wish for the preparation of an argument of so much importance.

I desire in the beginning to call your attention to the limitation of the statute under which you act. It is broad in one sense, and yet it has a certain well-defined limitation. That limitation seems to be that you are to confine your investigations to such matters as pertain to the relations existing between cities and towns and street railway corporations. There are various other subjects connected with the operation of street railways which might well be considered; but I think it well to suggest that the Committee bear in mind throughout their inquiries, as I shall try to do throughout my argument, that there is this limitation upon their statutory powers.

I say this with special reference to the fact that, at certain previous hearings, there has been called out from one or two of the speakers for the street railway companies the suggestion that the Committee might well undertake a general revision of the street railway laws of Massachusetts. In some respects that might be advisable; in other respects it would be extremely inadvisable. After very full conference with the representatives of the street railway companies, I think I may say that it is their practically unanimous opinion that the Committee had best not undertake to revise many of the provisions of existing law, but, on the contrary, confine themselves to the few broad general questions of public policy, which, when settled, will do very much to remedy all existing difficulties. I may suggest, before I close, some of these subsidiary subjects which might be considered. But our feeling is, in the first place, that it is impossible for us to discuss details of such proposed changes without knowing in advance what they are. I might stand here and talk all day, and yet might not mention some particular matter which the Committee, or some member of it, had in mind, and therefore should be wholly unable to assist the Committee in their deliberations upon that subject. But a more important consideration is, as we believe, that, if too many things are undertaken, when the matter gets before the Legislature there will be the same confusion which gave rise to the appointment of this Committee, and the same inability on the part of the committees of the House and Senate, rushed with their work as they always are, to give it deliberate and intelligent consideration. I shall, therefore, address myself only to certain fundamental matters which we believe ought to be remedied, if they can be remedied with justice to all concerned.

And let me say at the outset, gentlemen, that, after as careful study as I have been able to give this subject since I undertook it, I have come to this conclusion: that, whereas, upon the surface of things and to those who have not investigated it, the subject is an extremely complex and difficult one to deal with, yet it is simplicity itself so far as the fundamental questions which underlie it are concerned. That is a very different thing from saying that there is any simplicity in the remedies which may be adopted, if any remedies are found to be required. When we come to those, I am almost unable to suggest any particular form of remedy for existing evils, if there are existing evils, which would be satisfactory to any considerable number of persons. But so far as the principles which underlie the whole inquiry are concerned, I claim that they are extremely simple. I shall, therefore, speak to you without the slightest embarrassment with respect to those general principles; but shall speak with a considerable sense of embarrassment with respect to any suggestions of changes in existing conditions which may be made. After the most careful and exhaustive conferences with those in interest, I find that, however desirous they may be of arriving at some conclusions which will be reasonably satisfactory to themselves as well as to the public, it is practically impossible to suggest changes along any given line, except a single one which I shall mention, which will be equitable to all parties interested.

I speak for the companies in the State which compose what is called the Massachusetts Street Railway Association. The companies in that Association on Sept. 30, 1896 (the date of the last returns), had an investment of $53,410,186, out of a total investment in the State of $61,117,714, or 87 per cent. of the whole investment. I ought to say, I think, that I do not represent the Boston Elevated Railway Company. It is not a member of the Association. It is not a company as yet in operation; and its present status, owing to the recent refusal of the Railroad Commissioners to approve its proposed lease of the West End railroad,* seems to be so uncertain that perhaps it is impossible for any one to state just what its interest in this inquiry may be. I have, therefore, not inquired and shall not discuss how far, if at all, the conclusions to which you may come, and the legislation, if any, which you may recommend, will affect its interests.

In behalf of the Association and its members, I am glad to be able to say that they promoted, if they did not suggest, the law under which you are acting, and that they welcome this investigation. They realize that the relations which exist between the municipal and street railway corporations of this Commonwealth are not altogether satisfactory; and they feel that if in your wisdom you can develop and suggest some remedy for whatever friction may exist, and at the same time do it without detriment to the large investments which have already been made, you will have performed a distinctly commendable piece of public service. And I can say, in all frankness and sincerity, that we have the utmost confidence in this Committee — in its fairness, its conservatism, and its wisdom. What I shall say, therefore, will be more in the way of suggestion than of argument, with references to some of the issues which are pending.

I. HISTORY AND GROWTH OF STREET RAILWAYS.

As a basis of our inquiries, it will be well to review briefly the history and present condition of the street railway industry itself.

Street railways are an American invention, and are said to have been first operated in the city of New York in 1852. The first car was run in Boston by the Cambridge Railroad Company in 1856, and in the fall of the same year the old

---

* A modified lease has since been approved.

Metropolitan Railroad began to run its cars between Roxbury and Boston. Both of these companies subsequently became parts of the existing West End system, and it is an interesting fact that both the Metropolitan and the West End roads have, successively, been the largest street railway corporations in the world. To-day, I believe, the West End is exceeded in mileage and equipment by one road only — that in Philadelphia. But incidentally I may say that it appeared here the other day, as you will remember, that, whereas in Philadelphia the mileage exceeds that of the West End by about 33 per cent., its capital exceeds the capital of the West End by about 100 per cent.

The success of the street railway in New York, and of the Cambridge and the Metropolitan railways in Boston, was such as to lead to the application for many charters prior to the sixties. Some were operated and some were not. Difficulties were encountered, as, for example, in the case of the Cambridge Railroad, which found itself in the position of having its tracks torn up in the streets of Cambridge, and finally, when they came to equip the road, the original stockholders were unwilling to do it, and they had to organize another corporation and get fresh capital, which capital, as a matter of fact, furnished the cars which were first run from Cambridge into Boston. In this connection I may call your attention to a very interesting article, written by Mr. Prentiss Cummings, vice-president of the West End company, entitled "The Street Railway System of Boston," published in the "Professional and Industrial History of Suffolk County," copies of which have been separately printed and can probably be obtained from Mr. Cummings.

The growth of this industry during three periods of ten years each — that is, between 1866 and 1896 — will be very strikingly shown by a table which I will now submit, from which the following facts, in brief, appear:

In 1866 the total mileage operated was 107; in 1896 it was 1,291. The car-miles run in 1866 were 4,952,248, and in 1896 they were 53,613,685. The capital stock and debt in 1866 was $5,257,540, and in 1896 it was $61,117,714. The gross receipts in 1866 were $1,707,447, and in 1896 were $14,900,941. From this it appears that thirty years ago the entire mileage of the street railways of Massachusetts was only about one-third of the present mileage of the West End system alone; that in 1876 that mileage had increased so that it represented about two-thirds of the present mileage of the West End system; that in 1886 that total mileage had grown so as to exceed the present mileage of the West End by about 25 per cent.; while in 1896, the total mileage being about 1,300, the West End mileage constituted less than 25 per cent. of the whole.

TABLE A.

Growth of Industry in Last Thirty Years.

YEAR.	Miles Operated.	Car-Miles Run.	Capital Stock and Debt.	Gross Receipts.
1866............	107.82	4,952,248	$5,257,740 00	$1,707,447 35
1876............	206.05	9,130,952	8,496,426 00	2,975,091 23
1886............	407.64	19,661,675	14,590,374 00	5,878,583 05
1896............	1,291.04	53,613,685	61,117,714 00	14,900,941 93

Capital stock of companies in Massachusetts Sept. 30, 1896,	$30,727,818
Net indebtedness (exclusive of capital stock) Sept. 30, 1896,	30,389,896
Total investment Sept. 30, 1896	$61,117,714

I have here another table, showing in detail the growth of this industry in the last ten years. This table shows that the number of companies has increased in the last ten years from 41 to 83; that the total investment has increased from about $14,600,000 to over $61,000,000; that the gross receipts have increased from less than $6,000,000 to almost $15,000,000; the car-miles run from less than 20,000,000 to nearly 54,000,000; the number of passengers carried from 112,000,000 to almost 300,000,000, the number of employees from 4,615 to 9,130, and the wages paid to employees from $2,250,000 to an amount considerably in excess of $4,000,000. This increase has been due principally to the introduction of electric traction.

The following table exhibits in detail the items of growth from 1886 to 1896, inclusive:

TABLE B.

Growth of Industry in Last Ten Years.

YEAR.	No. of Co's Organized.	No. of Co's Operating.	Construction and Equipment.	Total Investment.	Gross Receipts.	Miles Operated.	Car-Miles Run.	Passengers Carried.	No. of Employees.	Wages Paid to Employees.
1886......	41	40	$10,577,627 60	$14,590,374	$5,878,583 05	407.64	19,661,675	112,087,384	4,615	$2,257,584 71
1887......	43	40	12,202,581 19	16,544,688	6,459,524 80	470.27	20,625,846	124,787,328	5,222	2,638,183 40
1888......	44	38	12,933,255 08	18,464,101	6,860,504 32	533.59	23,244,767	134,478,319	5,531	2,688 730 85
1889......	43	39	13,720,805 73	20,789,980	7,554.509 06	571.65	24,259,491	148,189.403	6.302	2,947,809 54
1890	44	42	17,142,670 13	25,611,989	8,388,015 48	612.38	26,516,937	164,873,846	6,246	3,149.710 81
1891......	54	51	19,859,405 16	31,210,768	8,901,123 36	672.45	27,670,166	176,090,189	6,449	3,254,477 94
1892......	59	54	26,067,957 79	38,794,814	9,817,537 35	749.95	29,617,975	193,760,783	7,157	3,353,096 30
1893.....	60	54	33,681,321 89	49,589,688	10,894,704 11	874.14	34,507,282	213,552,009	8,070	3,285,926 00
1894......	68	54	35,552,503 36	53,020,295	11,236,428 32	930.47	36,722,978	220,464,099	7,451	3,216,638 24
1895......	75	58	37,151,041 24	55,357,081	13,246,371 98	1087.17	43,655,560	259,794,308	8,048	3,607,881 42
1896......	83	77	42,389,132 47	61,117,714	14,900,941 93	1291.04	53,613,685	292,358,943	9,130	4,143,379 74

The first successful use of electricity in this Commonwealth was not, as has generally been supposed, by the West End company, but by the Lynn & Boston company. That company began to run cars by electricity in July, 1888; the West End, in February, 1889.

One of the curious facts connected with the sudden and wonderful development of electric traction in this Commonwealth is that in 1886, by chapter 337 of the Acts of that year, the Legislature, foreseeing the possible substitution of some motive power for horses, passed a law that companies might use cable as a motive power, but wholly ignored the possible use of electricity. In the West End Act of 1887 (chapter 413) that company was authorized to use cable and electric systems. The possibilities of electricity had at that time become sufficient to warrant the insertion of the word in the act; but the cable was really the motive power which the West End at that time intended and expected to use. In the early days of electric traction in this Commonwealth, the companies were generally incorporated by special acts, which gave them express authority to use electricity as a motive power. But, curiously enough, no general law has ever been passed authorizing the use of electricity as a motive power in place of any other. The companies depend to-day upon Public Statutes, chapter 113, section 39, which is to the effect that a street railway company " may use such motive power on its tracks " as the aldermen or selectmen may from time to time permit. Some doubt has been suggested as to whether this provision of law is broad enough to include the erection of poles and wires and the making of such surface and underground alterations as are necessary for the operation of the present modern electric railroad. But that question has become so well settled now by usage that I suppose nobody would undertake to question the sufficiency of the general law for that purpose; at any rate, we do not suggest any change in it.

II. STATUS OF STREET RAILWAYS IN PUBLIC HIGHWAYS.

Having traced the history of the street railway, let me next refer to the history of roads themselves; because the history of roads and streets, the nature and theory of their uses, and the law which underlies those uses, constitute the secret of this whole question.

Highways of some kind or other are as old as civilization itself, but have been of very different kinds and qualities in different times and countries. The Romans built some of their wonderful roads in England, but these were allowed to fall into decay, and for centuries together such things as good roads were unknown in England. Macaulay, in his History of England, in commenting upon the wretched condition of roads in the time of Charles II., and upon the unsatisfactory social conditions for which that fact was chiefly responsible, deliberately expressed the opinion that inventions which abridge distance are more important to civilization than any others, the alphabet and the printing press alone excepted. In the times to which he refers a "coach and six" were not matters of luxury or extravagance, but were absolutely necessary, owing to the condition of the roads. When, only about two hundred years ago, carriages were invented which were capable of making the journey from Oxford to London in one full day, instead of two, as had theretofore been required, they were such wonders that they were dubbed "flying coaches." A short time ago I saw an original copy of an old advertisement of a line of coaches which proposed to start in April, 1706, and make the journey from York to London; which advertisement stated that the coach "will perform the whole journey in four days (*if God permits*), and sets forth at 5 in the morning." These antiquated schedules were not owing to the fact that they did not have good horses in England at that time, or that the art of coach-making had not advanced so that they could make vehicles which would stand the journeys, but to the wretched condition of the roads; and I am surprised to find, upon investigation, that the art of road-building in England is hardly more than one century old. In this country it is familiar knowledge, that, prior to the invention of the present form of bicycle, really good roads were unknown outside of a few of the principal cities and their immediate suburbs.

The Indian's trail through the primeval forest was the forerunner of the highway in this country. That was followed by the path blazed by the pioneer, which was scarcely more distinct than the Indian's trail had been. The pioneer was followed by the settler, who made paths for driving cattle and for horseback travel. Finally the colonists constructed rude highways for the use of carts and, finally, for the use of carriages.

Up to this time the only use of highways, in fact or law, was the use for travel. Lord Mansfield said in his day that the only right the King himself had in the highways was a right of passage for himself and for his subjects (1 Burrows, 143); and such had been the law since the time of Edward IV. at least (16 Mass. 34). But gradually, from necessity, as civilization became more complex and the demands of the public became more numerous, the uses of roads were multiplied. In the case of

Boston v. *Richardson*, 13 Allen, 146 (1866),

the Court said:

> "The right of the public in a highway, even when so ancient that its origin is unknown, is ordinarily limited to an easement for the purposes of travel."

But they added:

> "Whenever land is taken for public use as a highway, and due compensation made, the public, or those corporations or officers who act as trustees or agents of the public, have a right to make any use of the land, directly or incidentally conducive to the enjoyment of the public

> easement, and which the necessity or convenience of the public may require."
>
> "And such uses clearly include [besides the use for travel] the making of *culverts*, *drains*, and *sewers* under the highway for the cleansing of the streets and the accommodation of the inhabitants on either side."

In a more recent case, which I will refer to again presently, that of

Pierce v. *Drew*, 136 Mass. 75 (1883),

Judge Devens said:

> "It has never been doubted that, by authority of the Legislature, highways might be used for *gas or water-pipes*, intended for the convenience of the citizens, although the gas or water was conducted thereunder by companies formed for that purpose."

Certain other uses of the highway, besides those for travel, have been regarded in some jurisdictions as "in aid of the easement," as it has been put; as, for example, the location and maintenance of poles or posts for the support of public lights to light the highways. That use has been said to be in aid of the easement, because it is one of the methods of promoting the safety of public travel.

The question finally arose whether the presence of horse-railroad tracks in the streets was a new use, imposing a new servitude. That question was determined in the case of

Attorney-General v. *Metropolitan Railroad*, 125 Mass. 515 (1878).

Inasmuch as this is one of the vital points in our discussion, you will pardon me if I read a paragraph from that decision. The Court says:

> "The franchise granted to a street-railway corporation is not the grant of a right to appropriate without compensation an additional easement in the soil of the street. Nor can such use of the streets, under proper

> restrictions, be considered as the imposition of an additional servitude upon the land of the owner. The peculiar privilege given is the right, not to acquire land, or an easement in land, but only the right, so long as permitted by certain municipal authorities, to lay tracks in streets already appropriated to the uses of public travel, for the purpose of facilitating such travel; to modify the public use, and change, to some extent, the law of the road. Such a privilege, however wide the street in which it is exercised, must always create some obstruction to other travel, and be to some extent exclusive; and this is true of all other kinds of public travel. The location of a highway creates a servitude which includes all forms of travel not prohibited by law, with the right in the Legislature to give to municipal or other corporations, or to private individuals, the power reasonably to modify the use of the same for travel, as public convenience and necessity, in the application of modern improvements, may from time to time require."

A more difficult question subsequently arose, as to whether the location and maintenance of telegraph poles (and the same question, of course, is applicable to telephone poles) was consistent with the original use of the highway, or was a new use and imposed a new servitude. In other jurisdictions — in New York and Minnesota, perhaps elsewhere — this has been held to be a new use of the public highways; but in one of the most thoroughly discussed cases in our reports the contrary view has been taken by the Supreme Court of Massachusetts. It was a case where the selectmen of a town were about to grant a right to a telegraph company to erect poles in the public streets, and certain abutting land-owners brought proceedings to restrain their action, on the ground that this was a new use of the highway, for which the Legislature had provided no new compensation.

This was the case of

Pierce v. *Drew*, 136 Mass. 75 (1883).

The majority of the Court in that case said:

> "When the land was taken for a highway that which was taken was not merely the privilege of travelling over it in the then known vehicles, or of using it in the then known methods for either the conveyance of property or transmission of intelligence. . . . The discovery of the telegraph developed a new and valuable mode of communicating intelligence. Its use is certainly similar to if not identical with that public use of transmitting information for which the highway was originally taken, even if the means adopted are quite different from the postboy or the mailcoach. It is a newly discovered method of exercising the old public easement."

Two able judges, however, took the contrary view. They regarded the analogy from the street railway to the postboy and the mailcoach as "a somewhat remote analogy;" but they distinctly agreed with the doctrine of *Attorney-General* v. *Metropolitan Railroad*, to the effect that the establishment of a horse-railroad track in highways did not impose a new servitude upon them, and say that that decision is "founded on just principles."

On the other side of the line are steam railroads, whether on the surface or in the air. The leading case with respect to steam roads is that of

Williams v. *New York Central Railroad*, 16 N.Y. 97.

There it was held that the dedication of a street in Syracuse to public travel did not include, in anticipation, the use of it for a steam-railroad track. Anybody who has ever had the experience, as I have, of attempting to sleep in a hotel located on that street will readily agree with the view which the Court took of its use for railroad purposes.

It has also been held in the State of New York that an elevated railroad, which occupies practically the whole street and a portion of the sidewalks with its tracks, and runs cars eleven feet high, at high rates of speed, by means of steam locomotives, emitting smoke and cinders and dust and gas, and creating a great deal of noise and disturbance, and undermining the peace and comfort of all the people along the road, constitutes a new use of and imposes a new servitude upon a public street. The correctness of that view is recognized in our State, because the reason why the Boston Elevated railway must use the Subway is because it will thereby avoid the payment of enormous damages to property, which would arise if the road was erected in the streets in the business section of the city.

But some people thought that the previous decisions might not include the electric street railway. And so a bill in equity was brought to restrain the building of the West End road in certain streets in Cambridge. It is the case of

> *Howe* v. *The West End Street Railway Company*, 167 Mass. 46 (1896).

Inasmuch as this involves one of the precise issues which we are discussing, you will pardon me if I read a few words from the language of Chief Justice Field:

> "The electric railway of the defendant as now constructed and used is something intermediate between the street horse railway and the ordinary steam railroad."
>
> . . . .
>
> "It is obvious that the use made of a public way in the operation of an electric railway is of the same general kind as that for which the way was originally laid out, viz., the transportation of persons and things from place to place along the way. It is equally obvious that the actual operation of the electric railway shown in the present cases does not exclude ordinary travel from the way; that there is no exclusive occupation by the railway of any part of the surface of the way, and that the overhead structure is incidental to the use of the surface of the way, and does not prevent the public from using the way in the ordinary manner. . . . The whole system of street railways is founded on the theory that the use of the ways by the railways must be consistent with the use of the ways by other travellers at the same time."

So it is settled in Massachusetts, finally and deliberately, that the electric street railway, as it exists to-day, in its most aggravated form, as it might be termed, does not constitute a new use of the public highway or impose a new servitude upon it, but is entirely consistent with and similar to that for which the highway was originally dedicated.

It is well enough to remember that even the driving of cattle through the streets is a use which has been held to be consistent with the ordinary use of highways. Originally, our highways were nothing but cattle-paths; and the right to drive cattle through these paths having been acquired in ancient days, the right remains in the streets of modern cities. I suppose a drove of cattle might to-day be driven through Washington street, in Boston, with impunity, unless some police regulation of the city might thus be violated.

In very recent times a new use of the highways, in the ordinary sense of the term, has grown up and become very important, namely, the use by bicycles. I have no fault to find with the modern bicycle; I am somewhat of a devotee to it myself; and yet of all the nuisances that exist on earth I sometimes think that the bicycle is the chief. It is, at times, practically exclusive of other uses of the highway. Every one who wants to use the highway for any other purpose knows this to his sorrow. And yet nobody has suggested that the people who make this aggravating and sometimes almost exclusive use of our highways are subjecting them to a peculiar use for which they ought to pay something in the form of extra taxes.

In New York they now have motor cabs; in Newport, and perhaps other places, they have motor carriages; the fire-engine propelled by steam is already with us; and other new (in the sense of unusual) uses of the highways are likely to develop rapidly.

Nobody would suggest that these new-comers should pay for the use of streets in the form of extra taxes. And yet nobody knows how far these new uses may be multiplied and developed.

The following may therefore be named as existing uses of highways which are regarded as within the classes of uses for which highways in Massachusetts have been dedicated; namely, the uses made of them by pedestrians, equestrians, carriages, — public and private, — express wagons, drays and carts of all descriptions, for moving merchandise, coal, iron, lumber, granite, furniture, etc., cattle, bicycles and tricycles, motor carriages, omnibuses, and street railways.

All these involve more or less wear and obstruction of highways, and more or less curtailment of other uses. But all uses must reconcile themselves to each other, and any use is tolerated which is consistent with the original purpose of the highway, and will promote the convenience of the public.

In addition to the uses for travel, the following other uses may be mentioned as having been held to be incidental to the original purposes of the highway, and not imposing a new servitude: Underground pipes for drains, sewers, gas, water, electricity, steam, etc., and overhead poles and wires for telegraph, telephone, light and power lines, signal apparatus and other purposes.

But the highest of all uses is that for travel. None of these uses are specially taxed and none ought to be.

III. USE OF HIGHWAYS BY STREET RAILWAYS NO REASON FOR SPECIAL TAXATION.

I. THE NATURE OF THE USE.

It has been aptly said in this hearing that the street railway car is "the people's omnibus," a mere improvement of the old omnibus or stage-coach, running, for purposes of convenience and of economy, along two rails laid on the surface of the road. I think I can safely venture the statement that all other methods of public travel in public highways put together do not promote the original purpose of highways as much as does the use to which the street railway car subjects them. It is, therefore, a natural use, a legal use, and it has come to be the most popular and the most beneficial use to which the streets can possibly be put.

To tax these conveyances — these people's omnibuses, which are making the most popular, the most useful, the most comprehensive, the most convenient, the most economical use of public highways — involves as a necessary corollary the taxation of the omnibus, the cart, the dray, the heavy team, and whatever other mode of travel subjects the highways to use and the communities in which the highways are located to expense. When you get to that result you have re-adopted the idea of the old toll road, where every "chariot" (as it was called on an ancient signboard which I saw a short time ago) and every cart and every horse and every sheep had to pay its way over the public roads.

I notice a significant shake of the head on the part of one of the members of this Committee. If I have not made this matter plain by reference to the history of roads, and by citations of decisions of our courts, I am fortunate in being able at this point to call attention to an opinion (which, by the way, I had not read until after I had formulated my own) given by a body of men who are perhaps better qualified than any others in Massachusetts to express an intelligent opinion upon this subject. If you will refer to the Railroad Commissioners' report for 1896, you will find on page 110 some significant language upon this point, which I would not have read except for the incident to which I have just referred. I am a little afraid that it might not otherwise be read by the Committee, and I will therefore take time to read it.

The CHAIRMAN. — My only thought was that it seemed to me you might go still further in your argument in the same line, without danger.

Mr. BURDETT. — I have gone far enough for my purpose, Mr. Chairman.

The CHAIRMAN. — I thought you might go still further, that was all, sir, with perfect safety.

Mr. BURDETT. — You will pardon me for reading an extremely well put and succinct argument upon this subject from the Railroad Commissioners' report:

> "The railway is not to be regarded as an intruder, having no legitimate place or right to be on the public street. It is nothing more nor less than an improved method of public highway travel. The use of the highway by one method of travel necessarily interferes to a greater or less extent with the convenience and safety of its use by other methods. There are well-known inconveniences and dangers to other travellers attending the use of the highway by travellers in street cars. It must be conceded, however, that there is no known method of conveyance by which such large numbers of persons can be transported through the streets with so much convenience, expedition, and safety to themselves and other travellers, with so little noise, confusion, and dirt, and with so little obstruction and wear and tear of the street, as by the electric railway."

Nobody has ever accused the Massachusetts Railroad Commission, as now constituted, of being unduly prejudiced in favor of electric street railways, and the language just quoted is the language of a quasi-judicial body, knowing all the facts. They continue:

> "There are carried on the railways whose lines centre in Boston, an average of 425,292 persons daily — a number equal to nearly 86 per cent. of the entire population of the city. The great majority are carried through the most crowded thoroughfares. If it were possible to transport the same number of persons by any other available method of public or private conveyance, the obstruction, annoyance, and danger would on the whole be much greater than they now are."

That is a fact which people forget. No other method can be suggested by which so many people could be put through the streets of Boston without confusion if not chaos. They further say:

> "It has been more or less seriously proposed to make the ordinary use of the surface of the street for railway purposes a source of revenue or relief to the municipal treasury, either by sale of the railway location, or by an excise on cars, or a tax on earnings, or by requiring the railway company to pave or otherwise maintain the surface of the entire roadway."

They recognize in this opinion, that paving is a tax, and I shall have occasion to refer to that a little later on.

> "There is no reason why the railway company should not pay a tax on its corporate franchise and property such as other similar corporations pay. It is also proper that it construct at its own cost the tramway specially adapted to its use, and keep the portions of the roadway adjacent thereto in safe condition for other travel, as is now required by statute. These charges are a part of the cost of transportation which the passenger must expect to pay. Beyond this, it is not easy to see why one who carries passengers for hire in a car should be subjected to a tax for the use of the street, any more than one who carries passengers for hire in an omnibus, or who carries merchandise for hire on a dray. The radical objection to the proposed impost is not, however, that it is a burden on the railway company, but that it is a tax on the traveller. A tax on the carrier is a tax on the passenger. Whatever fare the railway passenger might otherwise have to pay, he must pay in addition to that fare his proportion of the tax; and the possibility of the reduction of his fare is to that extent postponed. Nothing has hitherto been more free than the use of the highway, for all persons, and for all purposes of travel or transportation. There is no good reason why the person who travels in a street car should pay, directly or indirectly, for the privilege of travelling on the highway, any more than the person who travels in a public coach or in his private carriage."

2. THE REASON OF THE USE.

Why do street railway companies use the public streets? Is it a matter of choice with them? Is it a matter of preference on their part? Not at all. The highways are used by street railways as a matter of necessity, to meet the public demand for that exact use of the highways; and it is largely from the fact that the steam railroad is located at a distance from the regular lines of travel, and, unlike the electric road, does not land its passengers at the doors of their offices and their houses, that this other use of the highway is required by the public. I am inclined to think, from such examination of the figures as I have been able to make, that if the street railways might be permitted (outside of the large cities, where, of course, it would be impracticable) to go upon private land and buy their way and own their road-bed, and exclude from that road-bed all other forms of travel, they would be financially better off than they are to-day. But the curious fact is, as I understand it, that under the present laws of Massachusetts, a street railway corporation goes outside of the terms of its corporate franchise when it buys a piece of land and constructs its road over it. I know of a case now where a railroad company is desirous of buying and using land along the side of the highway, but is unable to do so because the laws of Massachusetts are not sufficient for that purpose. What sense is there in talking about a special tax upon an industry which uses the highway in promotion of the principal uses of the highway, and uses it because the public demands that that particular use shall be made of it?

3. THE CHARACTER OF THE USE.

A single word as to the peculiar character of the use. That use is monopolistic, confessedly monopolistic; but it is necessarily monopolistic and preferably monopolistic. And no person with correct ideas upon these questions would for a moment suggest that it ought to be anything but monopolistic. The impracticability and inadvisability of the operation of two street railway lines through the same streets is too apparent for argument. Companies consolidated into large and important corporations, under the regulation, as they are, of State boards of the strictest control, operating in streets to the exclusion of other companies of the same kind in the same streets or in the same towns and cities, give the public better service and better satisfaction in every way than competing companies could do.

IV. DO STREET RAILWAYS INCREASE THE COST OF MAINTENANCE OF ROADS?

If I have succeeded at all to this point, I have demonstrated that neither in law nor logic is there reason for the suggestion that this particular class of corporations ought to be subjected to any peculiar excise for the use which it makes, in common with other users, of the public highways. But underlying the other argument — and this I believe to be the only premise which can be safely assumed by the other side — is the proposition that, admitting there is no just ground in law or logic for the special taxation of these corporations for their use of public ways, yet that they subject these ways to a peculiar and extraordinary expense, and ought to be required to pay something in the nature of reimbursement for that expense. I think I have not heard it put just that way, but that is the most favorable way of putting it for the other side. We have heard a great deal said about charging rentals for the use of the public highways, which is a ridiculous proposition, inasmuch as there is nothing to rent. There is no title in the street, as we shall presently see, in the municipalities which control them. We have heard a good deal said about taxes and excises, but not much about reimbursement, which, as I say, would be the strongest statement of the case.

Assuming the claim of extra expense to be true, that is no reason for the imposition of special taxes, because all forms of use of public highways for purposes of travel involve some expense to the municipalities in which the highways exist; and it is therefore only a question of degree whether this, that, or the other use subjects the town in which the highway is to more or less expense. As soon as you begin to impose taxation because the degree of use in one case is greater than in another, you lose sight of all general principles, and are adrift. So that, if you assume the fact to be that the use of highways by street cars subjects those highways to extra cost, that in itself constitutes no reason for special taxation of the company which operates the cars.

But what is the fact about it? Do or do not street railways subject highways to a use which involves additional expenses upon municipalities? I shall not discuss the evidence which has been put in upon that point. You have heard some evidence upon it, — good, bad, and indifferent, — some very loose statements, and some more accurate statements. The principal witnesses may be said to be the superintendents of streets of Brookline and Springfield, on the one side, and an ex-mayor of Springfield and an ex-superintendent of public works of New Bedford, on the other. The Brookline official did not undertake to give any figures, but simply gave his impressions from observation, that in macadamized roads the extra cost of maintenance is a good deal, according to the width of the road. The Springfield official published a paper (which I had reprinted for the information of those concerned), in which he undertook to give some statistics; but it turned out that in the entire list of streets which he named there are but two where there are any street railway tracks and those are practically continuous.

Mr. Drake, of New Bedford, after a very careful and exhaustive study of the well-kept books of the street department of that city, showed that that city, at any rate, has been subjected to a larger expense for streets that are not encumbered by tracks than for those that are. The explanation seems to be that, in some cases, ordinary travel avoids the streets where the tracks are; but upon the whole, his evidence tended strongly to show that it is at least doubtful, all things considered and all places taken together, whether the presence of tracks in any but the narrowest roads really subjects the other portions of the road to such a great deal of additional wear as has been claimed. In the case of streets that are paved from curb to curb, I believe nobody pretends that there is any great difference in expense; nor do they pretend that there is any great difference of expense where the railways are laid along one side of the public road, as is usually the case in the rural sections of the State; but it is only where the tracks are put in the middle of a macadamized street, not sufficiently wide outside of the tracks themselves to accommodate the travel, that this extra expense is incurred to any great extent.

I think, Mr. Chairman, that an intimation dropped by you at the first hearing is one which may well be borne in mind in the discussion of this question. That intimation was, as I understood it, that the art of road-building in the United States, even in Massachusetts, has hardly begun to be developed, in comparison with the state of the art in Europe. While you found there street railway accommodations which cannot for a moment be compared with those in Massachusetts, you also found such roadways that the presence in them of the street railway tracks constituted, practically, no obstruction to other travel. Let our municipal road-builders give us better roads, as they ought to do and will do in time, and much of the complaint against the car tracks will disappear.

V. IF STREET RAILWAYS INCREASE COST OF ROAD MAINTENANCE THEY MAKE AMPLE RETURNS THEREFOR.

But assuming, if you will, that, all things considered, these companies do subject the municipalities in which they operate to larger expenses for road maintenance than would otherwise be the case, and that that is a sufficient reason for subjecting them to extra taxation, I announce, without any hesitation, that the companies make ample and sufficient returns therefor.

I. DIRECT TAXATION.

In the first place, they make returns in the form of direct taxation. They pay local taxes upon all their real estate and machinery, and they pay to the Commonwealth a franchise tax upon the full value of their shares, after deducting the valuation of their machinery and real estate. (Public Statutes, ch. 13, § 39.) I have here a table showing the growth of taxes upon these companies for the last ten years. The result of it is, that while the increase in the number of companies has been 100 per cent., the increase in the total taxes paid by them has been 298 per cent. You may say that that does not prove anything, inasmuch as the increase in the number of companies may not represent the actual increase in the investment. That is true, but the table contains other figures, which show that the companies pay, proportionately, in the form of taxes, much more than they did ten years ago. The increase in taxes paid by the companies per passenger carried — which is a proper unit — was 52½ per cent. in the last ten years. When interest on funded and unfunded debt is taken into consideration, as well as taxes, the charge or expense per passenger carried has increased to the enormous extent of 83½ per cent. in the last ten years.

TABLE C.

Taxes Paid, 1886-1896.

YEAR.	Total Taxes.	Average per Co.	No. of Co's Paying Taxes.	Taxes per Passenger.	Taxes and Interest per Passenger.
1886	$131,356 15	$4,529 52	29	$0.00117	$0.00212
1887	196,311 66	5,948 83	33		
1888	190,474 74	5,952 33	32		
1889	227,123 24	7,326 55	31		
1890	284,979 33	7,916 09	36		
1891	324,106 79	7,537 36	43		
1892	404,721 22	9,636 24	42		
1893	455,339 94	10,841 42	42		
1894	418,999 37	9,976 17	42		
1895	488,138 01	9,571 33	51		
1896	523,346 19	9,023 21	58	0.00179	0.00389

1886-1896: Increase in number of companies, 100 per cent.
Increase in total tax, 298 per cent.
Increase of taxes per passenger, 52½ per cent.
Increase of taxes and interest per passenger, 83½ per cent.

The gentleman who represented before this Committee the Citizens' Association of Boston, found fault, as he always does, with the fact, as he claims it to be, that a street railway pays no more taxes than a bank or a mill situated in the same town or city. In the first place, it ought not to pay any more; it ought to pay nothing but proportional taxes. In the second place, it does pay more if it has more to pay upon. Why? Because that which gives value to the franchise of a street railway company is the presence of its tracks in the public streets; and so far as those tracks make the stock of the company valuable, so far that value enters into the franchise tax which is assessed by the Commonwealth upon the aggregate value of the property and franchise of the company. A bank has nothing in the public streets. A mill has nothing in them. But so far as the tracks of a street railway company constitute an element of value, just so far that element of value enters into the tax which the Commonwealth assesses. Therefore, the street railway company does pay more than the mill or the bank, which has nothing of the sort to pay upon.

2. INDIRECT TAXATION.

In the second place, these companies make a still larger contribution to the public in the form of what I call indirect taxation. The items of paving, both original and renewals, road widening and grading, bridge strengthening and building, removal of snow and ice, accommodation of public authorities in the construction, removal, and repair of pipes and sewers of all descriptions, constitute these taxes. From returns which I have recently received from some of the companies, I have taken the paving expenses of five companies at random, outside of Boston. These companies were organized at various times; some are old and some are comparatively new. But they have together invested the sum of $1,120,722 in pavements alone. The items are: round paving, $224,575; block paving, $890,745; other paving, $5,402. Some of the figures are estimated and some are exact. If the Committee wish, I will furnish them with all figures on this subject which I have succeeded in collecting. The assertion has been made in this State House more than once, and has not been contradicted, that the West End Street Railway Company has at least $2,000,000 of its capital invested in pavement in the streets of Boston and the surrounding towns and cities. I give these items merely to show the enormous aggregate that that charge becomes in the course of years. They have been accumulating for a good many years in some cases, so that the charge per annum might not be regarded as very large. I do not want to be understood as saying or admitting that the annual expense for paving in Massachusetts — taking all the companies together — is equivalent in amount to any of the new taxes which have been suggested. I only say that the aggregate investment in paving has become very large in the course of years.

I do not need to discuss the testimony which has been given here as to the amount of these indirect taxes in other forms; but I beg you to bear in mind what different gentlemen have said as to how they have been called upon to widen highways, without expense to the communities in which they are located; how they have re-graded highways in many cases; how they have made boulevards out of cart-paths; how they have strengthened and, in some cases, built bridges; and how they have in various other ways made substantial money payments to or for the benefit of the public, in consideration of the privileges which have been granted them. In some cases, for example, they have paid astonishingly large amounts, not counting inconvenience and loss of traffic, in accommodating themselves to public works, such as the laying, repairing, and moving of sewers and water-pipes and things of that description. If you think it material to go into an investigation of this item, you will find that these companies return to the communities in this form very considerable amounts, for which they should be credited.

3. CONTRIBUTIONS TO THE PUBLIC.

But perhaps more important than anything that I have yet mentioned are the contributions which the companies make to the public in another form. Take the matter of the increase of valuations. I will not inflict upon you statistics on that point. They are difficult to gather, and must be taken with a grain of salt There has of course been a natural growth of population and of valuation in Massachusetts; but the growth in valuation has undoubtedly been very much promoted and accentuated and accelerated by the opening of the lines of street railway companies. In the case of the same five companies to which I have before referred, the increase in valuations in the towns and cities where they operate, since the adoption of electricity, has been $54,839,818, and the average yearly increase since the adoption of electricity has been $10,793,243. And the testimony shows that very much of this is directly due to the introduction and development of electric traction.

Mr. Storey, a gentleman who unselfishly devotes a portion of his time and thought to the consideration of public questions, made the astonishing statement here, that, in his opinion, the town of Brookline is no better off than it was before the advent of the electric railway, because, as I understood him, the taxes are no less than they used to be. And yet I was interested to find that the municipal expenditures of Brookline in 1886 were $603,868, and that those expenditures had increased in 1896 to the sum of $955,949 — an increase of fifty-eight per cent. without the increase of a single foot of territory. Brookline, making this expenditure in 1896 as against the smaller one in 1886, without any increase of territory, seems to me to be much better off than it was before. There has been an increase in population in that time almost exactly proportionate to the increase in municipal expenditures; but that increase in population has been largely brought about by the introduction of the electric railroad. The people who have moved in have brought money with them, have bought property, have improved it, and thus have added to the municipal valuation. All things considered, that community of 16,000 people to-day enjoys much better accommodations and conveniences, and is far richer and better off, than the community of 10,000 people in 1886.

But I think I would be willing to place over and above all the things which I have mentioned the enormous contribution to the public which has been made by the companies in the form of increased facilities. You will remember particularly the testimony of Mr. W. B. Ferguson, who has probably had an experience as large as, if not larger than, that of anybody else in this State, in the exploitation and management of suburban or country roads. Some of the figures which he gave, off-hand, without a note, were most astonishing in their character. Mr. P. F. Sullivan, of Lowell, unquestionably the ablest statistician in this business, gave to you a statement of the facts with respect to Lowell and the towns and cities adjacent to that city. I have compiled a table from the stenographic report of the testimony of Mr. Ferguson and Mr. Sullivan, which is very interesting and instructive upon this point, and which I will now submit.

TABLE D.

Differences in Fares and Transportation Facilities before and after Introduction of Electric Traction.

From	To	Railroad or Other Vehicle Fare.	No. of Trains or Vehicle Trips.	Street Railway Fares.	No. of Street Railway Trips.
		Cts.		*Cts.*	
Lowell	Tyngsboro'	.17	4	.10	34
"	No. Chelmsford....	.09	6	.05	53
"	Chelmsford Centre..	.09	3	.05	38
"	Wamesit...........	.08	14	.05	69
"	Tewksbury	.14	15	.05	*D*
"	No. Billerica	.11	12	.05	34
"	Billerica Centre	.15	4	.10	32
Worcester	Leicester	.25*B*	2*B*	.10	50
"	Spencer	.50	—	.20	—
Haverhill	Merrimack.........	.35	4	.10	40
"	Amesbury	.65	4*C*	.20	40
So. Framingham.	Milford............	.27	—	.15	—
Medway	Milford............	.30	4*C*	.10	16
Gloucester *A*	Rockport *A*	.10	10	.05	½ hr.
"	Pigeon Cove.......	.25*B*	—	.10	—

A. — Railroad depot three-quarter mile from the populous part of the cities. Street railway through main streets.

B. — Stage.

C. — With change of cars.

D. — Line not yet started.

The street railway companies furnishing these accommodations have paid dividends of from 4½ to 6 per cent.

Take Lowell, for example. In old times the fare between Lowell and Tyngsboro, on the railroad or the stage-coach, I don't know which, was 17 cents, and there were 4 trips a day; to-day the people travel between the same places for 10 cents, and have 34 trips a day. In old times the fare from Lowell to North Chelmsford was 9 cents, with 6 trains a day; now it is 5 cents, with 53 trips a day. Take some of the other cases: the fare from Worcester to Leicester by stage, before the advent of the electric railway, was 25 cents, and the stage made 2 trips a day; people can now go for 10 cents 50 times a day between those places. Between Haverhill and Amesbury the old fare was 65 cents, with 4 trips and a change of cars; to-day the electric railroad takes the people between those points for 20 cents and gives them 40 trips a day.

One of the most marked cases which was testified to was that of the route between South Framingham and Milford or Hopedale. In old times, — or, rather, in very recent times, — one had to leave Boston not later than five o'clock to connect at South Framingham with a branch railroad, in order to get to Milford the same night, and at an expense of twenty-seven cents for the transportation. Now one can leave Boston at any time prior to nine o'clock, and on Saturdays eleven o'clock, in the evening, and can connect with the street railway at South Framingham, and get home the same night, for fifteen cents.

Between Medway and Milford — and that was a case, I remember, where the testimony showed that the entire highway was rebuilt by the electric railroad — the old fare was thirty cents, with four trips a day and a change of cars; whereas now the fare is ten cents, with sixteen trips a day.

And the roads giving those facilities to the public have paid only small dividends to their stockholders, without accumulating surpluses or making proper charges for depreciation.

You will also recall the testimony of Mr. N. Sumner Myrick

— a professional gentleman, connected with several roads in suburban or country districts. He told you how, in some cases, the district schools in the outlying portions of country towns had been discontinued and the children transported by the electric cars to the village schools and given the privileges of a better education; and how the farmers and the people who go to sewing circles and to prayer meetings, and to other social and religious gatherings, nowadays go by electricity, rather than behind the old nag or on foot as they used to do.

In short, these roomy, clean, safe, attractive, well-lighted, well-heated, easily propelled omnibuses are not only carrying our people from door to door, but from town to town; are not only promoting social intercourse and furnishing additional facilities for healthful and reasonable recreation, but are increasing the values of the property, and facilitating the transaction of the business of our people; are transporting them more comfortably, more quickly, more cheaply, and more satisfactorily than ever before; and in many other respects are adding daily and yearly to the convenience and happiness of our people.

VI. THE COMPANIES CANNOT CARRY GREATER BURDENS.

But whatever may be the truth with respect to the issues which I have so far discussed, I maintain that the street railway companies of Massachusetts to-day cannot bear any heavier burdens than they now carry. Corporate bankruptcy, reduced wages, or diminished facilities are inevitable, if any great raid is to be made upon their finances in the shape of extra taxes. Right here lies a fundamental difficulty in the public mind. Owing to the enormous increase in mileage and in the number of passengers carried and in the amount of the gross receipts of these corporations, the public has jumped to the conclusion that the business of electric railroading is nothing short of a Klondike bonanza. But quite the contrary is the fact. I suppose the average man who pays his five cents in a railway car in Boston thinks that he is making the West End a present of a large amount of money ; but, in fact, the labor alone employed on the West End road takes nearly one-half of the five-cent fare, and when the other expenses are paid, the stockholder gets only about *three-fifths of one cent* as his share of that fare. The fact is:

THE INTRODUCTION OF ELECTRIC TRACTION HAS NOT INCREASED THE NET RESULTS OF OPERATION.

In the last ten years, during which these roads have grown up, while the number of companies and the mileage and the gross receipts have increased as I have already stated, and while the aggregate dividends have increased from less than half a million to almost two million dollars, the rate of dividend has hardly increased at all, and it remains to-day at the very low figure of 5.87 per cent. of the total capital invested. The following table gives the figures for the last ten years:

TABLE E.

Dividends, 1886-1896.

Year.	No. of Co's Operating.	No. of Co's Paying Dividends.	No. of Co's *not* Paying Dividends.	Total Dividend.	Highest Rate. Per cent.	Lowest Rate. Per cent.	Average Dividend Rate for All Co's. Per Cent.	Average Dividend Rate for Co's Paying. Per Cent.
1886	40	22	21	$494,070 00	12A	2	5.41	6.73
1887	40	25	19	530,920 00	13	2.5	5.26	6.29
1888	38	21	25	625,616 67	10	3	5.74	6.72
1889	39	21	25	838,649 00	10B	2	6.82	7.61
1890	42	25	23	963,154 00	10	1	6.47	7.15
1891	51	22	34	1,100,015 00	10	3	5.63	6.44
1892	54	21	39	1,582,696 50	10	3	6.72	7.81
1893	54	25	35	1,716,637 50	10	1.5	6.63	8.22
1894	54	30	38	1,610,886 00	10.5	1	5.97	7.00
1895	58	33	42	1,606,196 00	9	2	5.76	6.63
1896	77	43	40	1,802,847 00	10.5	1.25	5.87	6.82

A. — One company (Naumkeag), with capital of $150,000, paid special dividend of 22 per cent. on $70,000.

B. — One company (Merrimac Valley) paid 42½ per cent. on $80,000.

The Railroad Commissioners' Report for 1897 shows that of the 77 active companies 34 paid no dividends and 43 paid dividends ranging from 1¼ to 10½ per cent.

The number of companies paying dividends within these limits is interesting and instructive in this connection. For the year ending Sept. 30, 1896 (the date of the last returns), the companies paid dividends as follows:

34	companies paid dividends of . . .	0	per cent.
1	company “ “ “ . . .	1.25	“
1	“ “ “ “ . . .	2.5	“
1	“ “ “ “ . . .	2.65	“
2	companies “ “ “ . . .	3	“
9	“ “ “ “ . . .	4	“
2	“ “ “ “ . . .	5	“
12	“ “ “ “ . . .	6	“
1	company “ “ “ . . .	6.5	“
2	companies “ “ “ . . .	7	“
9	“ “ “ “ . . .	8	“
1	company “ “ “ . . .	9	“
1	“ “ “ “ . . .	9.5	“
1	“ “ “ “ . . .	10	“
1	“ “ “ “ . . .	10.5	“

In the above table the West End company is put down twice, as it paid 7 per cent. on common stock and 8 per cent. on preferred stock.

The company credited with paying the highest dividend, 10.5 per cent., in fact paid 8 per cent. on $100,000, and 2.5 per cent. on $300,000.

One company credited with paying 8 per cent. paid 5 per cent. on $50,000, and 3 per cent. on $90,000.

One company credited with paying 6.5 per cent. paid 3 per cent. on $125,000, and 3.5 per cent. on $187,500.

The following companies paid the dividends put down against them upon less than their full capital stock:

One company paid 8 per cent. on $250,000 only, out of $400,000.

One company paid 7 per cent. on $300,000 only, out of $405,400.

One company paid 6 per cent. on $600,000 only, out of $800,000.

One company paid 6 per cent. on $40,000 only, out of $60,000.

But when we come to examine the net earnings and the surplus accounts of these corporations, and try to find the surplus profits which they have accumulated over and above the payment of very moderate dividends, we have some surprising figures to deal with. In 1886 the net surplus was $1,453,602; in 1896 that surplus had fallen, notwithstanding the enormous increase in business and capital, to $510,609. The percentage of that surplus to the capital invested had fallen during that ten years from 15.01 per cent. to 1.66 per cent. — almost the disappearing point. If you will consult the next table you will find that it has been since the introduction of electricity that these drops have become most positive and most startling.

TABLE F.

Net Earnings and Surplus.

YEAR.	Net Earnings.	Surplus.	Per Cent. of Net Receipts to Gross Receipts.	Per Cent. of Surplus to Capital Stock.
1886........	$1,026,774 90	$1,453,602 92	17.46	15.01
1887........	919,160 73	1,402,900 83	14.22	13.89
1888........	1,096,852 79	1,111,490 72	15.86	6.82
1889........	1,372,690 42	723,764 92	18.10	5.91
1890........	1,813,942 56	740,319 88	21.62	4.74
1891........	1,778,830 01	607,983 68	19.98	2.90
1892........	2,356,312 40	950,771 35	24.00	3.55
1893........	1,993,399 62	673,526 47	18.29	2.09
1894........	1,812,668 30	760,687 78	16.13	2.30
1895........	2,257,355 40	681,048 58	17.04	3.06
1896........	2,280,775 71	510,609 51	15.30	1.66

The difference between 1886 and 1887, as you will observe, was scarcely more than one per cent. But in 1890 it was only 4.74 per cent.; 1895, 3.06 per cent., and now it is down to 1.66 per cent. The percentage of net receipts to total income, which is another test of the solvency and success of corporations, has also fallen during this period, although in not so marked a degree as the surplus to which I have referred.

During this same period the average investment per mile of track had increased $13,712.05, or 42 per cent.

TABLE G.

Average Investment per Mile of Track.

YEAR.	Amount.	YEAR.	Amount.
1886................	$32,660 61	1892..............	$46,215 54
1887................	32,670 22	1893..............	53,367 28
1888................	32,303 80	1894..............	52,963 10
1889................	33,887 73	1895..............	49,120 00
1890................	38,279 58	1896..............	46,372 66
1891................	40,917 56		

Let us apply another test by the use of a table showing the density of traffic during the last ten years. The average number of persons carried per mile of main track operated in 1886 was 274,961, and in 1896 it had fallen to 226,453, or, excluding the West End, it had fallen from 150,647 per mile of main track operated to 121,396. That is to say, although the number of passengers carried, taking the whole State into consideration, had increased 160 per cent. during that ten years, the density of traffic per mile of main track operated had decreased 17.64 per cent., or, leaving out the West End, the traffic had increased 380 per cent. and the density of traffic had decreased 19.42 per cent.

TABLE H. Density of Traffic.

In Whole State, Including Boston.				In State, Leaving out Territory Covered by West End System.			
YEAR.	No. of Miles Main Track Operated.	No. Passengers Carried.	Average No. Carried per Mile of Main Track Operated.	YEAR.	No. of Miles Main Track Operated.	No. Passengers Carried.	Average No. Carried per Mile of Main Track Operated.
1886...........	407,649	112,087,384	274,961	1886..........	171,531	25,840,604	150,647
1887...........	470,271	124,787,328	265,352	1887..........	242,195	32,631,812	134,733
1888...........	533,593	134,478,319	252,024	1888..........	255,691	36,452,875	142,566
1889...........	571,654	148,189,403	259,230	1889..........	324,272	42,683,214	131,628
1890...........	612,384	164,873,846	269,233	1890..........	364,262	48,576,105	133,355
1891...........	672,452	176,090,189	261,565	1891..........	421,140	55,237,875	131,163
1892...........	749,953	193,760,783	258,364	1892..........	495,181	65,690,735	132,660
1893...........	874,144	213,552,009	244,579	1893..........	615,001	78,706,365	127,978
1894...........	930,473	220,464,099	237,353	1894..........	685,693	83,435,650	121,681
1895...........	1,087,175	259,794,308	238,963	1895..........	848,031	104,562,802	123,300
1896...........	1,291,040	292,358,943 (Increase of 160 % over 1886.)	226,453	1896..........	1,033,762	125,496.655 (Increase of 380 % over 1886.)	121,396
Total *decrease*, 1896 over 1886..............			48,508 or 17.64 %	Total *decrease*, 1896 over 1886...............			29,251 or 19.42 %

During those ten years, the average net earnings per mile operated had increased from $2,350.57 to $3,315.85, and the average net earnings per car-mile run, from .0522 cents to .0799 cents.

TABLE I.

Net Earnings, 1886-1896.

YEAR.	No. of Co's.	Average Net Earnings per Mile Operated.	Average Net Earnings per Car-Mile Run.
1886	29	$2,350 57	.0522 cts.
1887	32	1,868 22	.0446
1888	26	1,990 69	.0472
1889	29	2,360 60	.0566
1890	31	2,911 62	.0684
1891	32	2,639 21	.0643
1892	33	3,112 70	.0796
1893	34	3,218 18	.0835
1894	42	3,644 16	.0923
1895	49	3.767 80	.0938
1896	66	3.315 85	.0799

Referring back to Table B, we find that there has been an increase in total investment of 318 per cent., while from Table I we see that there has been an increase in net earnings per mile operated of only 41 per cent. and an increase per car-mile run of only 53 per cent.

Here is a still more striking and discouraging table. Between 1886 and 1896, while the number of miles operated has increased 216 per cent., and the gross receipts have increased 153 per cent., and the car-miles run have increased 172 per cent., the average gross receipts per mile operated, which is the proper unit, have decreased 20 per cent., and the average gross receipts per car-mile run have decreased 57 per cent.

TABLE J.

Total and Average Gross Receipts.

YEAR.	Miles Operated.	Gross Receipts.	Average Gross Receipts per Mile Operated.	Car-Miles Run.	Average Gross Receipts per Car-Mile Run.
1886	407.64	$5,878,583 05	$14,421 01	19,661,675	$0.2948
1887	470.27	6,459,524 80	13,735 77	20,625,846	0.3131
1888	533.59	6,860,504 32	12,857 25	23,244,767	0.2822
1889	571.65	7,554,509 06	13,215 26	24,259,491	0.3114
1890	612.38	8,388,015 48	13,697 40	26,516,937	0.3170
1891	672.45	8,901,123 36	13,236 82	27,670,166	0.3216
1892	749.95	9,817,537 35	13,090 92	29,617,975	0.3311
1893	874.14	10,894,704 11	12,463 11	34,507,282	0.3157
1894	930.47	11,236,428 32	12,076 07	36,722,978	0.3059
1895	1,087.17	13,246,371 98	12,184 26	43,655,560	0.3034
1896	1,291.04	14,900,941 93	11,541 81	53,613,685	0.2779

Increase in miles operated, 216 per cent.
" " gross receipts, 153 " "
" " car-miles run, 172 " "
Decrease in average gross receipts per mile operated, 20 per cent.
" " " " " " car-mile run, 57 " "

Referring to the aggregate surplus shown by the returns of 1894–5, which was only $234,304 for the entire street railways of Massachusetts, the Railroad Commissioners very aptly say that this is " close figuring," considering the amount of capital invested and business done. (R.R. Comms. Rep. 1896, p. 106.) And during all this time, while the surpluses of the companies have been diminishing, there have been practically no charges for depreciation.

I beg to call your particular attention in this connection to the Railroad Commissioners' Report of 1896, page 106. Discussing this question of whether or not the roads have increased in prosperity since the introduction of electricity, they say:

> "The inference from the foregoing statement might naturally be, that the street railway companies are largely adding to their net revenues from year to year, and earning if not paying more liberal dividends, or piling up a more abundant surplus. A closer and more careful scrutiny into the results and present conditions of street railway service does not sustain this conclusion."

Then they go on to discuss all the elements, which I should like to read, if I did not think it was an imposition to do so, giving the comparative results of street railway operations between 1885 and 1895, and say:

> "The truth appears to be that the electric railway is not on the whole earning so large a net percentage on the capital invested, or paying so large a dividend to the stockholders, as did its predecessor, the horse railway; and this will be found to be as true with respect to the city as the country railways, taken as a class."

They then proceed to discuss the figures (pages 108 and 109), which will be found interesting and instructive, and conclude as follows (p. 110):

> "It is not by any means intended to convey the impression that electric railway operation is, or is destined to be, a financial failure. The idea that it is likely to prove a source of extraordinary or abnormal profit must, however, be abandoned. It is a close business, yielding with skilful and prudent management only a fair average return, quite within the limit allowed by statute and conservative opinion as adequate and proper for investments of this character."

VII. BUT IF COMPANIES SHOULD PAY MORE, IN WHAT FORM SHOULD IT BE PAID?

Assuming, however, as I must assume, that others may disagree with my views upon this subject, and that public sentiment or public policy may require that there should be some readjustment of existing burdens, what form should that readjustment take? Four different methods have been suggested: (1) A reduction of fares; (2) A tax upon the net receipts; (3) A tax upon gross receipts; and (4) A combination of the last two.

1. REDUCTION OF FARES.

As to reduction of fares, I think that idea has not much support. It was suggested here at one time, but it does not appear to have stood the test of argument. The present fares are just and reasonable. I am assuming now that the present fare for a single ride is substantially five cents, although, considering the total number of persons carried and the issuing of free transfers, it may be a little less. On the West End system it is only about 4.50 cents per total passenger, while in the whole State, counting double fares and all, the average is only 5.08 cents per passenger. I maintain that there is not another thing on earth, except postage possibly, where one can get so much for the money which he pays as for five cents on a Massachusetts street railway. Of course people want lower fares. They would undoubtedly like to ride for nothing. But if they must pay anything, five cents, which is the natural unit, would seem to be a minimum, when the average length of ride, the character of equipment, and the extension of facilities are all considered. Formerly five cents was paid for a short ride, in poor cars, moving slowly. Now the same amount is paid for a long ride, in good cars, moving rapidly.

I may be pardoned for making a passing reference to the fares charged in other States and countries in comparison with our own. These comparisons are always suggested in these debates. But instead of dwelling upon them myself I want to commend to the attention of the Committee and suggest their reading the argument of Mr. Henry M. Whitney, who was then President of the West End Street Railway Company, before a committee of the Legislature in 1891, in which he goes over the question of the relative amount of fares in Massachusetts and abroad in a most comprehensive and instructive way. You will find by reading that argument that things are not as they have generally been represented upon that point. I will give a single illustration, that of Berlin. According to our information, the company pays into the city treasury a large amount of money, and yet it has succeeded in paying a fifteen per cent. dividend, and in accumulating a surplus fund which at the end of thirty years will entirely wipe out its capital. But Mr. Whitney shows that the average fare per mile in Berlin is 1.54 cents, whereas in Boston it is 1.30 cents. The same is true of Hamburg and certain other European cities.

But the suggestion that we can get any information or assistance from abroad, with respect to the amount of fare to be paid and the manner in which it should be paid, is easily disposed of by a mere glance at the results obtained there and here under the two different systems. There they have, as we know, the so-called "zone system," where one pays for what he gets — a more equitable method, in a sense, than that which we have here. If one rides a mile in England he pays a penny, or two cents; if he rides two miles he pays another penny; and so on; so that when he gets to the end of his journey, if it be a long one, he has paid out a good deal of money. And the same system obtains on the Continent, except in Paris, where the fares are six cents inside and three cents outside the car or omnibus. It is only the well-to-do man who can afford to ride a long distance on a street railway car in Europe, while it is only the well-to-do man who can afford to ride a short distance on the street railway cars in this country. If a gentleman in Washington street desires to be taken a few blocks upon the West End road, he must pay five cents. On the other hand, if a workingman wants to go to Arlington in one direction, or to Brighton or Brookline in another, he pays five cents. In other words, the European system is the system to accommodate the well-to-do, while the American system is the system to accommodate the poor.

The comparative results of these different systems are so striking that I cannot refrain from calling your attention to some of them. Mr. Storey, to whom I have already referred, made the statement that he was not able to find any slums in Paris or Berlin. But he needed to go no further than to the recent work of Dr. Shaw on "Municipal Government in Continental Europe" to find that those slums exist. In Paris there is a population of about two millions and a half, spread over a territory of only thirty square miles, or a population of 83,300 people to the mile. Dr. Shaw well says that in Paris, not only in the centre but in the surrounding circles, the shop-keeper does not have to take a street car to go home, because he simply goes upstairs when his work is done. The only large city in America having so small an area, and with which therefore you can compare Paris, that I know of, is Brooklyn. In 1890 the population of that city was 806,000, deposited on a territory of 26½ square miles; but that was only 30,500 per mile, as against 83,300 in Paris. In Chicago in 1890 the population was 1,100,000, on 160 square miles of territory, or only 6,850 to the mile; whereas New York (that is, Manhattan Island) had only 73,300 people to the square mile. But when you come to Berlin the condition of things, while on the surface good, is something appalling to the lovers of civilization. In the year 1885 Berlin had a population of 1,315,000 people. Seventy-three thousand of those people lived in tenements of a single room; 382,000 lived in tenements of two rooms; 432,000 lived in tenements of three rooms; 398,000 lived in tenements of four rooms or more; and of these, 117,702, or seven and two-thirds per cent., lived in cellars — cellars so noxious, so ill-calculated for the healthful or moral well-being of the people, that they have become the subject of drastic legislation since that time. The death rate among the one-room dwellers was one in six, whereas among those having four rooms or more it was one in two hundred. In 1890, 367,000 families in Berlin lived in 21,000 buildings, or an average of seventeen families, or seventy-five persons, in every building. Less than 600 out of 367,000 families had separate houses used as residences only. One-half of the entire population lived in houses containing upwards of 100 people. These figures will be found in Shaw on "Municipal Government in Continental Europe," pages 356–360.

Compare that condition of things with that here in Boston, where we spread the people out and give them air and light and room. In 1871 — I use these figures because I have not found any similar ones more recent — there were 14,478 dwelling-houses in Berlin, and in the same year there were more than 50,000 dwelling-houses in Boston, with only one-half the population.

Take Glasgow for a moment — the vaunted Glasgow. In 1881, when it had a population of 674,000 people, 25 per cent. of them lived in one-room tenements, 45 per cent. of them lived in two-room tenements, 16 per cent. in three rooms, 6 per cent. in four rooms, and only 8 per cent. in five rooms or more. I am glad to say that from 1881 to 1891, owing to the strenuous endeavors of the municipal authorities, the dwellers in one-room tenements had fallen from 25 to 18 per cent., and those in two-room tenements had increased from 45 to 47½ per cent.; but still, as Dr. Shaw says, the tenement house is almost universal in Glasgow. ("Municipal Government in Great Britain," pp. 83, 84.)

This is not a digression from my argument, because it goes to the meat of the whole question: Which is the better system? The better system is that which we have here, which takes the people out of the crowded centres.

The CHAIRMAN. — Don't you mean, sir, the better system *for us* is that we now have here?

Mr. BURDETT. — Yes, sir, decidedly.

The CHAIRMAN. — Because, having had recent occasion to look over it, I was led to conclude the difficulty abroad is they could not pay the five-cent fares paid here.

Mr. BURDETT. — You mean by that that the average man could not afford to pay that much?

The CHAIRMAN. — No, sir; ten cents for a man to go to his work and back, out of the wages abroad, would be prohibitory.

Mr. BURDETT. — Well, sir, the remedy for that strikes me as quite simple. It is that the fares ought to be less abroad. When you take a case like Berlin —

The CHAIRMAN. — They are less abroad.

Mr. BURDETT. — They are less abroad for a limited distance, but my point is —

The CHAIRMAN. — According to the modes of life of the people. They are based on that.

Mr. BURDETT. — As I understand you, the people could not afford to live outside the cities, because the fare would be too great if it were five cents. But where you have a corporation like that in Berlin, paying 12½ per cent. dividends for many years and 15 per cent. now, besides accumulating a surplus sufficient to wipe out its entire capital in thirty years, the remedy is perfectly simple. If that road were run on the basis that the West End or any other road in Massachusetts is run, the fare to or from the suburbs of Berlin would probably not be two cents.

The method which has been pursued in this country, particularly in Massachusetts, of spreading the people out, by the extension of existing lines and the building of new lines, and the carrying of people long distances for a uniform fare of five cents, has been practically a gratuitous contribution to the public weal by the existing companies. And this is the important part of this branch of the discussion. While the increase in mileage in the last ten years has been 216 per cent. (from 407 to 1,291 miles), the increase in net earnings has only been 122 per cent. (from $1,026,774 to $2,280,775).

Here are some figures taken from the testimony of Mr. Sullivan — simply as an illustration. In 1886 the street railway mileage in Lowell was six; in 1896 it was sixty. The capital was formerly $106,000, as against a present capital of more than $2,000,000. The receipts were $82,000, as against almost $400,000 now; but the average receipts per mile were $12,824 then, as against $6,773 now; and the receipts per car-mile then were 34 cents; whereas the receipts per car-mile now are only 21 cents. Or, to put it in another way, the mileage has increased ten times, the capital has increased twenty times, the receipts have increased four and three-quarters times, but the average receipts per mile of track have decreased 47 per cent., and the average receipts per car-mile run have decreased 38 per cent. These figures are an absolute demonstration of the proposition which Mr. Sullivan laid down, that those extensions are gratuitous contributions to the public.

I remember, in reading Mr. Whitney's argument, that he mentioned the fact that the mayor of Malden had been before the committee demanding that the West End road pay special taxes for the use of the streets in that city; and he made the statement, which was not contradicted, that the company's lines in the city of Malden did not pay, and that nothing would be more welcome to the West End stockholders and directors, so far as money considerations were concerned, than a revocation of their entire locations within the boundaries of that city. In other words, the city of Malden was receiving service for less than it cost the railway to furnish it. And yet its mayor wanted extra taxes.

If the idea of reductions in fare were sound, it would be altogether too drastic a method of dealing with this question. A reduction to four cents is, substantially, a diminution of gross receipts to the extent of 20 per cent., and a reduction to three cents a diminution of gross earnings by 40 per cent.

Either of these reductions would render some companies insolvent, and a very few companies could stand either of them. This question of fare is now regulated by Public Statutes, chapter 113, section 44. This statute gives the Railroad Commissioners the right to reduce fares; but with the proviso that

> "Such fares shall not, without the consent of the company, be so reduced as to yield, with all other profits derived from operating its road, an income of less than 10 per cent. upon the actual cost of the construction of its road and the purchase of property for its necessary use, to be determined by said board."

The CHAIRMAN. — Do you suppose there is any one on earth who can find what the actual cost of the construction of a road is?

Mr. BURDETT. — Well, I should suppose if the books —

The CHAIRMAN. — As a practical question.

Mr. BURDETT. — Had been properly kept, that would be ascertainable.

The CHAIRMAN. — Don't many elements enter into it, your loss by experiments and anything of that sort, on which human judgment has to be exercised?

Mr. BURDETT. — Yes, sir; but they all appear in the accounts. No experiments are made without a ledger account against them. They will all appear in the books of the corporations. How much of those expenses should be regarded as waste, and how much should be regarded as legitimate cost, is quite another question.

The CHAIRMAN. — That was what I referred to, of course. But go on. Excuse me for interrupting.

Mr. BURDETT. — I am very much obliged for the interruption, because otherwise I would feel some embarrassment in discussing this question, as I have already talked so long.

The CHAIRMAN. — It always seemed to me, sir, that those words in that statute were as empty words as ever crept into a law — you establish a rule which sounds well and breaks the word of promise; it would be impossible to make out a case under it before the Railroad Commissioners, or any one else. No case has ever arisen that I am aware of.

Mr. BURDETT. — Yes; many cases.

The CHAIRMAN. — Where the Commissioners have interfered to decrease fares because of an excess of dividends over actual cost?

Mr. BURDETT. — They have gone into the question, and, so far as I know, have never found any difficulty in construing the statute.

The CHAIRMAN. — But they have never yet reduced any fares under it, on that ground, have they?

Mr. BURDETT. — I think they have. They certainly have passed upon every case that has come up under the existing law, without suggesting any difficulty in the application of the statute.

The CHAIRMAN. — I never heard of any practical result derived from it.

Mr. WARREN. — I know they have in some cases, Mr. Chairman.

The CHAIRMAN. — Have reduced fares because they were in excess of 10 per cent. on actual cost of the property?

Mr. WARREN. — Yes.

The CHAIRMAN. — I was not aware of it, then.

Mr. CRAPO. — I know of one case.

Mr. BURDETT. — This provision of the Public Statutes with respect to the reduction of fares has been made the subject of some assaults, and a gentleman appeared here the other day, who was the author of House Bill No. 773, of the session of 1897. In his bill he proposes to substitute "six per cent. upon the then present value of the road and equipment (exclusive of the franchise), and other necessary property," for ten per cent. upon the cost. That is an unsound and unfair proposition; and if that statute is within the jurisdiction of this Committee, I want to discuss it briefly.

In the first place, the suggestion of six per cent., in view of the history of dividends in this State, which shows that they have been very few and far between, and that the average of them has been very small indeed, is altogether inadequate for this kind of a business; but I shall have occasion to discuss that subject in another connection, and will only mention it here. But the principal difficulty with the proposed change is, that it attempts to substitute as a criterion the present value for the cost of these properties. That means what? It means to cut out from under the stockholder, as a dead loss, the cost of all experimentation which has been involved in the progress of the art for the last ten years.

The CHAIRMAN. — And of the loss in doing away with antiquated appliances?

Mr. BURDETT. — Yes, sir, altogether.

The CHAIRMAN. — It is a premium, in other words, upon not keeping up with the march of progress?

Mr. BURDETT. — That is the whole story.

The CHAIRMAN. — Because, if you do, you will do it at your own expense.

Mr. BURDETT. — That is it exactly. That is the result. When the steam railroad was originally built from Boston to Lowell, according to my understanding the directors put down granite sleepers at a much larger cost than would have been involved in the use of wooden sleepers. And they did it with the double purpose of giving the best possible service to the public, and of making their roadway more permanent than it otherwise would be. It turned out to be a mistake, and those sleepers had to be taken up and others substituted. If one should do that to-day on the Boston & Albany or the Consolidated Road, he would be regarded as an idiot; and the stockholders or directors who allowed it to be done would by common consent be left to bear the burden of their own folly. But when this was done in the early days of railroading it was done in good faith, with an idea that it was the proper thing to do. I take it that few persons would now maintain that that expenditure ought to have been charged to expense and should have come out of the stockholders, but on the contrary would readily admit that it was an expense which constituted a perfectly legitimate charge to the travelling public. So, take this street railroad business as we have it to-day. The Railroad Commissioners, in a recent report, have said that motors which cost $2,850 a few years ago can be duplicated now for $850. But they were bought at the best price obtainable at the time. Every business depending upon invention must have its experimental period. And the cost of such experiments, if honestly and fairly made, should constitute a part of the charge upon the public.

The CHAIRMAN. — Why, Mr. Burdett, are you aware of the fact that there is imminent, grave probability that this whole electrical machinery will be thrown away in ten years?

Mr. BURDETT. — I am entirely aware of that, sir.

The CHAIRMAN. — That illustrates the proposition perfectly. And yet to-day the electrical machinery is the best.

Mr. BURDETT. — And for that reason I would not, for example, vote for or advocate, in any place or under any circumstances, the burying of the trolley wires in Boston. I believe it would involve an enormous and ruinous expense. It would subject our people to an inconvenience from the digging up of the streets which would amount to an almost intolerable nuisance. And when it was all done, it might, in a few years, be regarded as having been foolishly done.

The CHAIRMAN. — There are two appliances being worked up with great energy, which, if either of them succeeds, will greatly modify the use of electricity, or drive it out of the field for the street railway — the acetylene gas-engine, and compressed air.

Mr. BURDETT. — Personally, I believe that the possibilities of the air motor are to-day more promising than any other form of locomotion; and when it comes, if it ever comes, it will be an ideal system. And it will not, like the underground trolley, involve the absolute destruction of practically all the present investment in the public streets. You cannot get an engineer on the West End road to admit that there will be a saving of more than ten per cent. of the present outside construction of that corporation, in case the trolley wires are put underground. Practically, everything will be thrown away. The enormous expenditure involved will not insure the stability of the new device. This simply serves to illustrate how experimental in some respects the industry still is, and how little foundation in fact there is for the assertion, sometimes made, that the days of experimentation are over.

All legitimate expenditures, by reason of wise, or possibly in some cases unwise, experimentation, are, therefore, properly subjects of public charge. But gentlemen who want everything fixed upon present values lose sight of that. They care nothing about the investments, and do not appreciate the financial courage necessary for somebody to have to try these experiments. They also lose sight of the fact that there might have been an appreciation instead of a depreciation in this property, and that it is a poor rule which will not work both ways. Test it a moment. Suppose, if you can, that there had been an appreciation in the value of this property. You would not hear one of these gentlemen saying that the company was entitled to charge a fare based upon the appreciation of the value of their property. Suppose in the last ten years, instead of this electrical machinery becoming more and more common and being manufactured by a larger and larger number of concerns, some manufacturing corporation had won a great patent suit, under which for seventeen years it would have the right to charge a royalty on every motor or other essential piece of apparatus used on an electric car, and these companies had been subjected to the payment of double or treble or quadruple what they had theretofore paid for such apparatus. Would they be heard to say that their fares must be readjusted on the basis of present values? The public would ridicule the suggestion, and the very men who now demand a readjustment upon the basis of present values would be the most strenuous in their denunciation of it. It is only because there has happened to be a depreciation instead of an appreciation in values that the suggestion of present values as a basis is so much urged.

The reason for a readjustment upon the basis of present values, as stated in the last three lines of section 2 of House Bill No. 773, to which I have heretofore referred, is "to place street railway companies on the same level with competitive business as regards net income." It is not necessary for me to argue to this Committee that that is a wholly fallacious foundation for any such legislation. Companies subject to competition, but, on the other hand, legally unrestricted as to the amount of their dividends and earnings, can well afford to be subject to the laws of supply and demand. If quasi-public corporations were made subject to the law of supply and demand, and if their earnings and dividends were legally unrestricted, and if they were not subjected to the stringent official control to which they are now subjected, — in short, if they had a free hand in a free field, and were permitted to get what they could out of their enterprises while they were profitable, — I should admit that the idea of placing them on the same level with other competitive businesses would be sound. But, it goes without saying, such is not the case. If you tie the hands of these corporations by legislation, and subject them to close control, you must give them something as an equivalent; and that equivalent is fair treatment of the capital subjected to that legislation and control.

The question of the cost of a piece of street-railway property as a criterion for fixing fares can be safely left, I think, to a board as intelligent and conservative as the Board of Railroad Commissioners of this Commonwealth has proved to be. I suppose that board has a right under existing laws to construe their meaning, and to say what foolish or improvident expenditure put into a given enterprise shall be disregarded in arriving at proper cost, and what intelligent experiments shall be charged up to the public as necessary to the establishment of the enterprise. And if there are difficulties in the construction of the law, that is not a sufficient reason why the law itself should be overthrown.

2. TAX ON NET RECEIPTS.

Passing on, the next suggestion is that there should be a tax on net receipts. This is not much favored. The public will expect little and will get less. This plan is ordinarily, in practice, a delusion and a snare. Under such a form of profit-sharing, the public's share of the profits rarely, if ever, appears. And this whole idea of profit-sharing is fallacious, when you stop to think about it. Commissioner Hayes pricked the bubble when he inquired whether the idea does not involve the sharing of losses as well as profits. The idea of partnership always involves an equal liability to loss as well as an equal opportunity for profit; but no advocate of the idea has suggested this result of it. If you adopt this theory, you must make some provision, if you are wise enough, for the community sharing in the losses.

But there are some advantages to the public in this sharing of net earnings. Surplus earnings will inevitably go into construction and equipment, and the result will be to keep them up to the highest standard.

But we are not opposed, gentlemen, to this idea of profit-sharing with the public, if it can be worked out satisfactorily.

The CHAIRMAN. — There is one form of that I would like to ask you if you have ever considered; that is, the sharing of profits, or taxation, you might call it, of unusual dividends. That is, supposing a company is allowed to divide up to seven per cent., then give it free permission to go on and divide up to 100 per cent., if it can earn it, provided only that if any amount is divided over seven per cent., an equal sum shall be paid into the treasury of the Commonwealth, or whatever public treasury it may be. That might be called taxation of excessive dividends.

Mr. BURDETT. — I propose to discuss that proposition, Mr. Chairman.

The CHAIRMAN. — It gives the company an inducement to earn a dividend, but not to retain the whole of it. There is an inducement there, and yet a protection to the public.

Mr. BURDETT. — I propose to discuss that, and I propose to favor it.

The CHAIRMAN. — You propose to favor it?

Mr. BURDETT. — Yes, sir. Notwithstanding what I have said as to its illogical and —

The CHAIRMAN. — I don't see why it is illogical. It leaves inducement to the private interest to go ahead and earn all the money it can. It goes back to the fundamental principle that half a loaf is better than no bread.

Mr. BURDETT. — We are perfectly willing to give the public the half-loaf after we have had a fair chance to take a bite out first.

The CHAIRMAN. — After you have had your half.

Mr. BURDETT. — I will develop that a little later.

The beauty of my position is, that I can advance from one proposition to another, with a feeling that I have been sound on every proposition, and yet can yield my position for the purpose of meeting public sentiment half way. The difficulty with gentlemen who appear upon the other side of these questions is, that they must maintain and prove the soundness of all their propositions; because otherwise they have no standing. The weakness of any link destroys their whole chain.

3. TAX ON GROSS RECEIPTS.

I think I have shown that there is no reason why there should be any extra taxation of these corporations. I think I have also shown that they are not capable financially of bearing an extra charge in the form of a tax on gross receipts. I think it is evident that the idea of profit-sharing is not altogether logical. And yet before I get through I shall suggest in behalf of the companies which I represent a method by which, in consideration of certain releases from other burdens, we would be willing to share our profits above a given level, and also pay something on our gross receipts.

I have said that these companies ought not to pay anything on their gross receipts, and that was upon the theory that they already bear their full proportion of the public burdens. And yet those burdens are of such a character that they may perhaps be readjusted; and in consideration of such readjustment, the companies might be willing to submit to a taxation to some extent upon their gross receipts, under the conditions and within the limitations which I shall name.

The present condition of things as to the supervision and control of highways is objectionable from many points of view. There is a dual jurisdiction, which leads to conflict and dissatisfaction. To-day the town or city builds, paves, and maintains its streets without any outside assistance, until the street railway comes along, in response to public demand, and puts its tracks in portions of those streets. Thereupon a conflict arises. The company is required to pave between its rails and, in case of unpaved streets, eighteen inches outside, and to keep that pavement in repair; which is, as I have already suggested, a serious tax upon the finances of the corporations. In addition to that, as has appeared here from the testimony, particularly in recent times, the companies are further required oftentimes to widen streets, to regrade them, to build and strengthen bridges, and the like.

Let me say a word about this street-widening right here. That seems to be the most serious complaint which is brought before this committee by the representatives of municipalities. Intelligent public officials come in with this as a grievance against the railroads. Inasmuch as the introduction of street railway tracks requires the widening of highways, they say, Why in the name of common sense must the city or the town be subjected to that expense? The answer is a very simple one. When the railway comes there for the purpose of promoting public travel the highway becomes *insufficient for public travel;* and, being insufficient for public travel, the public authorities must make it sufficient for public travel. If that involves a widening because of the presence of the railway, a widening there must be. If it should become the fashion for rich people to ride in carriages ten feet wide, and for people to carry loads on drays that required much more space than the prevailing methods of transportation do, nobody would suggest that the owners of those vehicles should pay for the widening of the streets. The streets would simply have become insufficient for the uses for which they were intended.

The CHAIRMAN. — Wouldn't the police regulation be invoked to restrict the size of carriages?

Mr. BURDETT. — It might be. And so here, if the street railway car ever becomes such an obstruction in the public way.

The CHAIRMAN. — You only have to step down into Washington street and you find it so to-day.

Mr. BURDETT. — Yes; but only by reason of the number, not by reason of the size; and that is a question of reasonableness. If they should build cars two stories high, like those antiquated affairs that run around in Berlin and other cities, and were an eyesore to the people —

The CHAIRMAN. — Birmingham is the champion city in that respect.

Mr. BURDETT. — I am not familiar with that. I was referring to Berlin because I had mental pictures of the cars which I saw in Berlin a few years ago.

The CHAIRMAN. — Birmingham is the place!

Mr. BURDETT. — But if they should widen cars or make them unnecessarily cumbrous in the streets, police regulations might apply to them. But of course I am not discussing that feature of the matter now; I am simply taking extravagant illustrations, to illustrate my point.

Take a street through which one hundred people pass to-day; a new depot is built at the end of it, and a thousand people want to pass to-morrow. The street has become insufficient for the purposes of public travel, and the public authorities must widen it. Take the case of some of the streets near the new Southern Union Station here in Boston. Some of those highways will probably become so much congested that the city will have to widen them at a large expense. And the city will not charge the railroad companies for doing it, or the people who use these streets to reach the railroad trains; but it will be done out of the public treasury. So here, when you stop to analyze it, the suggestion that because there comes along a method of accommodating public travel in the streets in a way and to an extent never known before, and that method renders the streets too narrow for all other uses, the company affording these superior facilities for public travel should widen the streets, is absurd upon the face of it.

But this, though important to bear in mind, is a digression in this place. What I was about to say was, that these burdens of paving, and of repairing, grading, and maintaining highways, have in practice been found to be so serious, and the dual jurisdiction of the streets is manifestly so undesirable, that the companies I represent might be willing to submit to a tax upon their gross receipts, within certain limitations, and to share a portion of their profits, if they can be relieved from these other burdens.

The CHAIRMAN. — That is, the commutation of burdens into money. Would they be willing to have this burden commuted into money payment?

Mr. BURDETT. — Yes; upon the theory of commutation. That is what it comes to. It does not involve the idea of any additional burdens on the companies.

The CHAIRMAN. — One great difficulty, it has struck me throughout this investigation, of the present system is, that the railroad companies are exposed to a sort of odium on the ground that they pay no taxes, because the taxes are muddled up and hidden under different headings. People consequently say that this burden or other is not a tax. It is an insidious practice, unintentional, but still a —

Mr. BURDETT. — That is precisely what I was about to say.

The CHAIRMAN. — Excuse me for talking.

Mr. BURDETT. — I am very glad to have you anticipate my argument, Mr. Chairman, because it shows that you are following it. I was about to say that one of the strongest reasons, and perhaps the strongest reason, after all, for such a readjustment, would be to satisfy public opinion and make it a little more intelligent than it now is upon this point. If the West End road, for example, was paying into the public treasury one or two per cent. of its gross earnings, and was relieved from paving and the care of streets, people would say, " What a great thing the city of Boston is getting out of the West End road."

The CHAIRMAN. — Are you going to submit to us any figures as to what paving amounts to as an item in the cost of maintenance?

Mr. BURDETT. — I think not.

The CHAIRMAN. — That is a very important point.

Mr. BURDETT. — My reason is that I have been unable to obtain them. If your wisdom can suggest a line to be followed in the way of figures along this proposed readjustment of burdens, I shall feel that you have not labored in vain.

The CHAIRMAN. — That is true.

Mr. BURDETT. — But it is a very difficult thing for me to suggest.

The CHAIRMAN. — It is a question I have put repeatedly in the course of this hearing. I have found no one who seems able to tell me what those items amount to as items in the general cost of maintenance.

Mr. Burdett. — No, sir, I have been unable to get it.

The Chairman. — Have you made an attempt?

Mr. Burdett. — I have. I have sent out blanks, with the hope of getting just that item, among others; but in some cases the figures are exact, while in other cases they are estimated. In the cases of the five companies which I have already mentioned, three of them have kept their paving account separately and they know what that item has cost them.

The Chairman. — Those we could get, then.

Mr. Burdett. — In some cases they have included paving in track and road maintenance. You will find in the West End report, which was submitted here the other day, that the item of track and road maintenance amounts to over $800,000; in that item is included the cost of original and renewed pavement, but just how much it amounts to does not appear.

But the smaller of these corporations, which constitute such a large percentage of the whole in number, feel that this charge for street maintenance is not sufficient in their cases to make it wise or possible for them to submit to a tax in lieu of it.

The Chairman. — Those are the country companies?

Mr. Burdett. — The country companies.

The Chairman. — Where they run in the gutter?

Mr. Burdett. — Those companies run in the gutter, as you say. They have been required to widen and regrade roads, to build and strengthen bridges, and the like; but they have made their investments, as they claim, and they say that their expense for street maintenance will hereafter be very small, and if anything more is put upon them in the form of taxes, even by way of readjustment, their burdens will be increased instead of readjusted. So that I suggest, gentlemen, that you very carefully consider whether, in case any scheme for taxation upon gross receipts is reported, you should not recommend a classification of the companies.

Of the seventy-seven companies actively operating in this State,

Sixty-six have gross earnings of less than $100,000,

Twelve have gross earnings of between $100,000 and $500,000,

One has gross earnings between $500,000 and $1,000,000,

One has gross earnings between $1,000,000 and $2,000,000,

And one has gross earnings in excess of $8,000,000.

You have, therefore, one great class, composed of sixty-six out of seventy-seven companies, whose earnings are under $100,000; and perhaps all those companies ought to be exempted from any scheme of readjustment which may be recommended for the others. On the other hand, they constitute so large a portion of the total number that it may be thought to be legislating for a very small portion of the whole to leave them out. But, after careful inquiry and consultation with the people who represent those roads, as well as those who represent the larger ones, I have come to the conclusion that all companies with gross earnings of less than $50,000 ought to be wholly exempted from the provisions of any law which may be suggested as to a new scheme of taxation. If their earnings are less than that, they are too small to incur any additional fixed charges; whereas, if their earnings exceed that sum, even if they do not exceed $100,000, they are ordinarily in a position where an arrangement of this kind might not seriously embarrass them.

The CHAIRMAN. — It is an interesting point in the discussion, the question how the street railway differs from anything else using the highway, and should not be treated like anything else. It is a matter which has occupied my attention a good deal, and I wish you would look over this definition of the franchise of a street railway. The result of my consideration has been to define it in about these words: that the street railway franchise is the exclusive right to run for money improved carriages in certain specified public streets, over a special pavement, laid down for that special use, using therefor peculiar motive appliances of a character which others cannot use, entailing extraordinary pecuniary burdens on the communities. There are no less than six points here in which the street railway differs from anything else you can name, for instance, omnibuses; first, it is an exclusive right; next, there is an improved class of carriages.

Mr. BURDETT. — It is not an exclusive right in law, Mr. Chairman.

The CHAIRMAN. — But practically it is an exclusive right.

Mr. BURDETT. — In practice.

Mr. CHAIRMAN. — You yourself argue that competition on that same street is utterly out of the question.

Mr. BURDETT. — And yet under our present statute one company can run cars over the tracks of another indefinitely, if the Railroad Commissioners permit it.

The CHAIRMAN. — Yes; but practically it is an exclusive right, running these improved carriages of great size and weight through the streets over a special pavement, which no one else can use except crossing to and fro, laid down for their special use, and using therefor peculiar motive appliances, such as electricity, etc., which cannot be duplicated for any one else; it is for their own use, and all this entailing, as it must, unusual pecuniary burdens, or special pecuniary burdens, such as street widening, paving, etc., on the community. All these things differentiate this special form of franchise from any other. The service provided for is unlike omnibuses. It is unlike hacks. It is unlike bicycles. It is unlike private carriages. I should like to have you take that definition, because it is one I have given a good deal of thought to, and I want you to consider it.

Mr. BURDETT. — I know what the general character of my answer would be, Mr. Chairman. I would refer you to the language of our highest court with respect to the nature and growth of the uses of highways. The judges lay down the broad proposition, over and over again, that any and all uses of highways must yield to any new uses which the conveniences and the necessities of the public require. And the law does not undertake to anticipate in advance just how far those new uses will differ from former uses. They will be legitimate if they are not exclusive.

The CHAIRMAN. — They are exclusive — practically exclusive. The Courts may say they are not as much as they please, but they are.

Mr. BURDETT. — Exclusive in one sense, but not in another, Mr. Chairman. They do not exclude other public travel. That is the test.

The CHAIRMAN. — But they exclude all other public travel of a like character, and that character is the only character of travel which can be used.

Mr. BURDETT. — That simply means that they are monopolistic; that is all.

The CHAIRMAN. — For instance, you cannot have a double system of vehicles run by electricity, you cannot have a double system run by cable road. It is unlike hacks, it is unlike anything else. That street is for that particular purpose, given up exclusively to that company, and it is equipped with arrangements for its use.

Mr. BURDETT. — It is only exclusive in the sense that the —

The CHAIRMAN. — That it is exclusive.

Mr. BURDETT. — No, I beg your pardon. Let me make myself clear. *It is only exclusive in the sense that that particular use is a monopolistic use of the particular equipment required for that use.* It is not exclusive in the legal sense of excluding other travel; and the moment that street railways get to be such an incumbrance upon a public highway as to substantially exclude other travel, at that moment the Court will pounce upon them and say, "You are guilty of a new use of this highway; you have imposed a new servitude upon it; and you must pay for it." However, I should be very glad to take your definition and study it carefully. It will give me food for thought for many hours, I have no doubt.

The CHAIRMAN. — The difference is very obvious to the lay mind — the difference that frequently exists between a legal proposition and a practical proposition. It is what might be called the metaphysics of the law. They may call it a new easement or a different easement or anything else they please, but it is exclusive, or monopolistic, as you term it. And where it is a monopoly, the question would naturally arise whether the parties enjoying its use would not be willing to pay something for the privilege of taxing the community through an exclusive use of the streets, so far as their business is concerned.

Mr. BURDETT. — I am not saying that they might not be willing to do it; I am disputing the soundness of the proposition that they have anything which can properly be called an exclusive use of the highway, that is all.

The CHAIRMAN. — This is entirely outside of the discussion. To define what a street franchise is has been a very interesting subject to me.

(Recess.)

4. TAX ON GROSS AND NET RECEIPTS.

Mr. BURDETT. — The objection, Mr. Chairman and gentlemen, to the adoption of either of the theories which have been discussed — of taxes on net receipts or taxes on gross receipts — I have endeavored to state. Leaving out for the present and hereafter during this discussion the claims which I have made, that neither of these taxes can reasonably or logically be imposed on existing companies, I am now prepared to say that I think the corporations which I represent might be willing to accept a combination of the two systems.

This would be upon the theory that the tax on gross income, under such a combined system, would be naturally fixed at a smaller sum than it otherwise would be, and that the tax upon net earnings would be in the nature of a division of surplus dividends over a fixed amount, and would be a popular method of adjustment. The payments which are now made by the companies in the form of indirect taxes for paving, road maintenance, and so forth, are included in the item of road and track maintenance, for which the companies get no public credit, no matter how large those payments may be; whereas, if, in lieu of those charges, a given amount of money was exacted from the corporations, it would be known of all men. We might not pay any more, but we would get much more credit for what we do pay.

We are governed largely by precedents in this Commonwealth, and for that reason I will mention some precedents for the suggestion of a combination tax. You will find that in the amendment of the Elevated Railroad charter, chapter 500 of the Acts of 1897, this theory is adopted; because in section 10 that act provides that the company shall pay to the municipality seven-eighths of one per cent. of its gross earnings until its dividends have reached six per cent., and one-half of its dividends over six per cent.

That provision avoids the difficulty which exists in any scheme of profit-sharing measured by net earnings, because it depends solely upon the amount of money divided to the stockholders. If you provide that a company shall share such a portion of its net receipts, that involves the difficulties of accounting, and gives rise to suspicion that the true state of things is not known, and makes it necessary for the law to provide some method for ascertaining what the real earnings are. If, on the other hand, the profit-sharing scheme is confined to a division of profits declared in the shape of dividends, then you have escaped all difficulties of accounting. While, perhaps, this may not be regarded, from all points of view, as an entirely satisfactory way of doing it, yet I think that it is safe enough to trust to the cupidity of the owners of the companies to make it profitable to the public.

Human nature can be trusted to work out satisfactory results from a scheme of dividing profits when such division is accompanied by larger dividends. That would remove the principal practical objection to the suggestion of a division based on net earnings, such as prevails in the cases of some steam railroad companies, where the public never see any share of the net earnings, except in the shape of superior equipment and accommodation.

In the bill which was referred by the Legislature to the Rapid Transit Commission in 1891 the same principle is recognized. You will recall what Mr. B. W. Warren said about that bill — that though it was the product of the joint labor of two committees of the Legislature, after much consideration, it had so little support when it came to be analyzed in the House, that, to prevent its utter defeat, it was referred to the Transit Commissioners. Mr. Warren was himself at that time one of the leading and most influential members of the Legislature, and what he stated to you was of his own knowledge. But the principle of taxation measured by dividends was recognized in that bill. The agitation of this subject in the Legislature of 1891 was preceded by, and perhaps was the result of, an elaborate investigation by city officials in Boston, who brought their conclusions to the Legislature. Those conclusions were not entitled to much consideration, because, as always in such municipal investigations, they were reached after an insufficient study of the problems involved, by men who were not trained or fitted for such inquiries.

The Rapid Transit Commission, a body more scientifically constituted for the consideration of such problems, disapproved of the bill which was referred to them. That bill provided for a graduated tax of from 5 to 10 per cent. on dividends not exceeding 10 per cent. and half of the dividends in excess of 10 per cent.

The Rapid Transit Commission reported a bill of their own, which met with as cold a reception in the Legislature as the Legislature's bill had met in the Transit Commission. It died a natural death. It simply provided for a franchise tax equal to dividends paid in excess of 8 per cent.

There are some foreign precedents which are worth mentioning in this connection. In Rhode Island this question of the payment of taxes on net and gross earnings has been thrashed out with a great deal of vigor, and I know something about it, because I have been consulted. The Union Railroad Act, passed in 1892, provides for a twenty years' exclusive tenure in the streets of Providence, and for a special tax on gross earnings, and that is all. This act does not provide for profit-sharing. But in the act concerning the Narragansett Electric Lighting Company, passed at the same session of the Legislature, there is a provision for a like exclusive use of the streets of Providence for the purposes of that company for twenty years, and it is provided that, "in full payment for the rights and privileges in and to the streets and highways of said city hereinbefore granted, a special tax equal to 3 per cent. of the gross earnings of said corporation" for the first ten years, and a tax of not less than 3 nor more than 5 per cent. of the gross earnings for the next ten years, shall be imposed upon the company; and, further, that

> "Any and all net earnings over and above a dividend of eight per cent. per annum, and a cash surplus not exceeding ten per cent. of the then issued and outstanding capital stock, shall be applied to the reduction of the cost of its services to the city and its citizens."

This does not recognize the practical business advisability of measuring the division of profits by the dividends declared, but it bases such division upon "net earnings." Under this act much difficulty might be encountered and much friction created in ascertaining the amount due the public, because it is a question of net earnings over and above eight per cent. and not a question of dividends over eight per cent.

The thing which has given rise to more difficulty in my study of this subject than perhaps everything else put together, is the difficulty of suggesting, in behalf of those whom I have the honor to represent, what form any readjustment of present burdens should take, and particularly what figures should be used in the attempt to make that readjustment. It hink I am safe in saying that, all things considered, the bill which was introduced into the Legislature of 1897, and which was referred, among others, to this committee, originating with the Associated Board of Trade, and being House Bill No. 445 of 1897, is the best starting-point for such legislation which can be suggested. It is scientific in its construction. It recognizes the equities on both sides. It is practical, in that it recognizes the fact that it is earnings as measured by dividends which must be considered. Taken altogether, it constitutes the best skeleton (because that is all it is) upon which one may begin to work.

The first section is all right, although I do not see precisely what utility it has.

The second section provides for a franchise tax of three per cent. on gross earning, and in addition thereto " a sum equal to the amount such street railway company shall pay in dividends on its capital stock in excess of five per cent. per annum."

There are serious objections to this section as it stands. In the first place, the figures are wrong. Three per cent. on gross earnings, I may say here and now, is more than we believe any of the companies can properly be assessed, with safety to them or to the public whom they serve. In the second place, we find fault with the limitation of dividends to five per cent. before there is a division with the public.

Let me discuss for a moment what seems to me to be the right figure for dividends. There are several methods of ascertaining this which might be suggested, and I will suggest three. In the first place, you can take a "flat" amount, whatever it may be, and say that the companies may be authorized to pay a dividend to that extent, and after that divide with the public. What should that point be, if you should adopt that system? The mayor of Somerville, one of the most intelligent and enlightened city officials who came before you, went so far as to admit that a five per cent. dividend on the West End stock was, after all, not quite to be compared with a five per cent. investment in a real estate mortgage or with a four per cent. investment in a government bond. He admitted — or if he did not, everybody else did — that the Chairman was right in suggesting that there were elements of risk, of hazard, of the lottery, about a street railway stock, which did not obtain in cases of ordinary investments. But he was unable or unwilling to state what the figure ought to be. I am going to state a figure which, while it may strike such men as Mayor Perry as excessive, is suggested upon the theory of averages. Take the case of the Lynn & Boston Railroad Company, for example, which pays, I believe, eight per cent. to-day. It was twenty years getting to the point of paying anything. If you take the history of that road and of its dividends, you will find that, although it appears to be an eight per cent. dividend-payer, its real ability, as exhibited by its financial history, has been very much less than that. And so, taking the history of dividends throughout the State, it will be found that an eight per cent. dividend now really means much less than that when tested by the law of averages. I therefore suggest eight per cent. as the limit of dividends before profit-sharing with the public.

I referred this morning, at the very outset of my discussion of the proposition that the companies could not afford to pay any more than they now do, to the facts with reference to dividends as they appear in the Railroad Commissioners' reports from time to time. If my memory serves me, without referring to the table now, I think that the proportion of companies paying dividends now is just about the same as it was ten years ago, that is, about one-half.

Mr. CRAPO. — How many pay eight per cent.? Out of the seventy-seven companies, — you say there are seventy-seven, I think, — how many pay eight per cent.?

Mr. BURDETT. — Nine companies paid eight per cent. (See *ante*, p. 40.) In the Commissioners' Report of 1896, which Mr. Warren kindly hands me, only thirty-three of seventy-five companies paid any dividends at all.

Mr. CRAPO. — Thirty-three paid dividends, out of seventy-seven?

Mr. BURDETT. — Yes, sir. One company paid eight per cent. on preferred stock and six and a half on common, and seven companies paid eight per cent.

Mr. HAYES. — If I don't interrupt you?

Mr. BURDETT. — Certainly not.

Mr. HAYES. — If we go into the question of dividends as a basis of taxation, must we not also go into the question of capitalization?

Mr. BURDETT. — As to what the proper amount should be upon which the dividends should be paid?

Mr. HAYES. — Yes.

Mr. BURDETT. — I think that is one of the elements to be considered. It may be more or less important, according to the dividend-figure which one has in mind. A low figure might not require the same inquiry into capitalization as a high figure would. In getting at the figure which I have stated, eight per cent., I have attempted to get at a fair average, all things considered; and the question of capitalization comes into it more or less. In considering the question of capitalization, the questions of experimentation, of depreciation, and of absence of surplus and sinking funds must be considered. But from the best information I can get, I am of the impression that if you are going to adopt a basis on the doctrine of averages eight per cent. is as low as it ought to be put. And that of course would mean very much less than eight per cent. in all cases where, as is now the usual rule, the Railroad Commissioners have required the sale of stock at more than par. They have required the sale of stock under the law of 1893, chapter 315, at prices ranging from $175 down to $100; and that fact must also be considered in arriving at an average.

The second method to be suggested for getting at the amount of dividend to be allowed before a division with the public is one for which there is a good deal of scientific reason, as it seems to me. It is not my invention, but it is one which I am very glad to suggest. It is, to take a different measure in different cases. In the case of companies which have not paid any dividend heretofore, and in the case of all new companies, the maximum dividend before a division of profits might be six per cent. In the case of companies that have heretofore paid more than six per cent., their average dividend for the last three or five years, as the case may be, should be regarded as the maximum which they should be allowed to pay before division with the public. And in the case of companies whose stock has been sold at a premium under the order of the Railroad Commissioners, either the average of the last three dividends paid prior to such order, or the last dividend paid prior to such order, should be the limit. This plan is much more exact and scientific than that of the uniform "flat" dividend; but of course it is not quite so simple.

In considering whether a uniform dividend of eight per cent. should be allowed, if that system is adopted, you ought to bear in mind, among other things, in addition to what I have already mentioned, the tremendous uncertainties of the future. I need not enlarge upon this matter, because I touched upon it this morning. For one, I believe that the uncertainties of the future of this industry are as great now as they ever were.

I now call your attention to still another suggestion which has been made; and I cannot do it in any better way than by reading the rough draft of a bill in which it is embodied. I am not offering this, gentlemen, as the result of the concensus of opinion in our Association. Indeed, I am not urging any of these plans upon you as plans upon which we all agree. I am simply stating them, and asking you to consider the merits and demerits of each.

Starting with section 1 of the Board of Trade Bill, if it has any force or meaning, as it is, section 2 would read as follows:

> "Every operating street railway company, whether already or hereafter organized, shall annually pay, in addition to the taxes now provided by law, a street franchise tax of one-half of one per centum of its gross earnings if its gross earnings are less than one million dollars per annum, one per centum if its gross earnings exceed one million dollars and are less than two million dollars per annum, and one and one-half per centum if its gross earnings exceed two million dollars per annum, such tax to be estimated upon the gross earnings of the corporation for each year ending September 30."

I am personally in entire agreement with these figures, so far as they embody the idea of the taxation of gross income. And I think I am safe in saying for the companies, that if you make certain exemptions — I think you ought to exempt all companies with gross earnings of less than $50,000 — this schedule would be fair and reasonable; that is, one-half of one per centum on companies with gross earnings of less than one million dollars, one per centum on companies with gross earnings exceeding one million and less than two million dollars, and one and one-half per centum on companies with gross earnings above two million dollars.

Mr. HAYES. — Leave the present taxes as they are?

Mr. BURDETT. — Leave the present taxes as they are, but relieve us from paving and the care of streets. I want that understood, all the way through, as an essential part of our suggestion. But it is a fixed charge, has nothing to do with profits, and must be paid as an underlying obligation. And being a fixed charge, payable absolutely, we desire to be relieved from existing burdens with respect to the paving and care of streets.

The next section of the proposed bill reads as follows:

> " Every operating street railway company hereafter organized, and every such company already organized which shall accept the provisions of this act by a vote of its directors, approved by a vote of a majority of its stockholders at meetings duly called and held, and shall file certified copies of such votes in the office of the secretary of state within six months from the passage of this act, shall annually pay, in addition to the taxes now provided by law, and the tax imposed by section 2 of this act, a street franchise tax of 2 per centum of its gross earnings, and in addition thereto a sum equal to the amount such street railway company shall pay in dividends on its capital stock in excess of 7 per centum per annum: *provided* that no corporation shall be compelled in any year to pay the street franchise tax provided for in this section whose earnings for that year have not, in the opinion of the railroad commissioners on petition by such corporation, or of any city or town which would be entitled to any part of such tax, been sufficient to pay, in addition to the operating expenses of such company, all necessary and proper fixed charges, exclusive of said tax, to properly maintain the tracks and other property of the corporation, to properly provide for depreciation and for such surplus account as may be allowed by said commissioners, and to pay 7 per centum dividend on its capital stock, but shall be compelled to pay annually only so much of said 2 per centum [on gross earnings] as said corporation shall earn in excess of said 7 per centum on its capital stock, determined in the manner herein provided: and *provided further*, that in the case of any company having preferred stock, the amount required to pay the stipulated dividend thereon shall be deemed a fixed charge, and that in the case of any company already organized which has issued capital stock at a price above the par value thereof under the provisions of chapter 462 of the

> act of 1894, or under a requirement of the board of railroad commissioners, the annual dividend to be first allowed such company under the foregoing provisions of this section shall be at the rate last paid by such company before the last order or requirement of said board of railroad commissioners prior to the passage of this act fixing a price upon, or requiring a sale at auction of, such stock instead of at the rate of 7 per centum, as above provided."

Then there is an important provision, which I shall discuss a little later on, with respect to the revocation and alteration of locations, which we regard as a vital thing. There is another section repealing a part of the Public Statutes requiring the companies to keep the streets in repair; and that is substantially all of that act. I have not studied it with sufficient care to justify my discussing it further now; but it contains some of the essential principles for which we are contending.

I said that the Board of Trade Bill, No. 445, recognized the equities of the case on both sides. The proviso of the second section is as follows:

> "That no corporation shall be compelled in any year to pay the street franchise tax herein provided for whose earnings for that year have not, in the opinion of the railroad commission, on petition by such corporation, been sufficient to pay all necessary and proper fixed charges, exclusive of said tax, to properly maintain the track and other property of the corporation and to pay five per cent. on its capital stock; and such corporation shall be compelled to pay only so much of said three per cent. as it shall earn in excess of said five per cent. on its capital stock as above determined."

In other words, Bill No. 445 provides for a tax on gross income, payable, however, out of such excess of profits as may remain after payment of five per cent. dividends, and payable only to the extent that such excess may justify. If there is any dispute about what that excess is, that is left to the Railroad Commissioners upon the application of the company. The bill also requires the payment of a sum equal to the excess of dividends over five per cent.

It then apportions these taxes according to the mileage in each city or town, which I think is inequitable and unfair. The apportionment ought to be according to car-miles run, or on some such basis, because the mere length of track is of no consequence in arriving at a proper division of the taxes. It finally provides, in the last section, practically in consideration of these extra taxes, that the companies shall not be subject to the revocation of their locations without the consent of the Railroad Commissioners, and shall be reimbursed for losses occasioned by any such revocations.

Mr. CRAPO. — Wait a moment, if you please. This special tax on gross earnings which you speak of, of ½ per cent. and 1 per cent. and 1½ per cent., what are you going to do with it? Who receives it? How is it distributed?

Mr. BURDETT. — It goes to the municipalities. It should be in lieu of the payments which we now make in the shape of paving and street maintenance, and therefore, of course, would go back to the same source.

Mr. CRAPO. — And be distributed in proportion to mileage?

Mr. BURDETT. — Be distributed, I should say, in proportion to car-miles run, or something of that sort.

The CHAIRMAN. — Didn't you state just now that the law provided it should be according to mileage, but it ought to be —

Mr. BURDETT. — No, sir; I stated that as the suggestion contained in this Board of Trade Bill.

The CHAIRMAN. — That it should be according to mileage, but you thought it should be in proportion to car mileage?

Mr. BURDETT. — Yes, sir. That is a question, of course, in which we have no selfish interest, because it makes no difference to us what becomes of the money after we part with it.

I may say, therefore, without further discussion, that we think that this bill, No. 445, comes nearer than anything which has been suggested to being about the right basis to start with. It is the only bill which takes any but the narrowest view of the subject; and, upon reading it carefully, you will see that it does recognize the fact that there are two sides to the question, and that both must be dealt with intelligently.

A 3 per cent. tax on gross income, levied upon all the companies, would annihilate existing sinking funds and nearly wipe out the accumulated surplus of all the companies. I assume that no thoughtful person, in dealing with this subject, will be inclined to make those funds and that surplus any less than they are to-day. I think few, if any, of the members of the Association which I represent would dissent from the statement that if we are to have a "flat" tax on gross receipts, it should be graduated according to classes, and should not exceed 1, 1½, and 2 per cent. for the different classes. But we think that the public would be better satisfied, and that, upon the whole, the matter would be more comfortably and satisfactorily adjusted, if we were required to pay a smaller tax upon gross receipts, to wit, ½, 1, and 1½ per cent., according to classes, and then share with the public our profits over a certain amount measured by the dividends we pay, as has already been suggested.

VIII. NET PROFITS. — PROPER ITEMS OF EXPENSE.

I do not know just what this Committee can do about it, but I am clear that something ought to be done to encourage the accumulation of larger surplus accounts and more liberal charges for depreciation. The importance of that suggestion in this connection is, that in arriving at what are net profits, you must first find out what are actual expenses and what are proper charges. Those charges ought to consist of at least five items. First, there are the taxes which we must pay to the public; and inasmuch as the public comes in first of all for a revenue, which is a fixed charge upon the companies, it would seem to follow reasonably and properly that they ought to come in last of all in a division of the profits. Then we have interest charges, which must be met, and which are subservient only to the public charges in the form of taxes. Then come operating expenses. In determining what are proper operating expenses, the item of wages, which constitutes about forty per cent. of total operating expenses, if I remember rightly, should be given due consideration, and nothing should be done which would tend to decrease the present fair and liberal rates of compensation which are paid to the employees. They are, and must be, sober, industrious, and skilful men, capable of enduring the rigors of our climate, and I join heartily in what Mr. Cummings so well said in their behalf.

Then, as I have said, the companies should be encouraged to accumulate surplus accounts and sinking funds, and to make proper charges for depreciation. I do not mean nominal surplus accounts. There are a great many nominal surpluses on the books of the quasi-public corporations of Massachusetts, but those surpluses, so far as my observation goes, are generally represented by property, which has been subject to such depreciation that the surpluses would probably be wiped out if proper charges for depreciation were made. I mean actual cash surpluses, to provide for the contingencies and demands of the future, whatever they may be, and to keep capital unimpaired by reason of the depreciation of property. Upon examining the Railroad Commissioners' reports, you will find that the amount of cash surplus carried by the companies is extremely small, and that in most cases it does not exist at all. But it is as improvident for a corporation as for an individual not to lay aside something "for a rainy day."

In the Narragansett Act in Providence the company is specifically authorized to accumulate a cash surplus not exceeding 10 per cent. of its capital stock, before sharing profits with the public. In the bill reported by the Rapid Transit Commission in 1892 there is an express provision for the accumulation of a cash surplus not to exceed 4 per cent. of the capital stock.

Then there is the item of depreciation. You will look through the reports of these railroads in vain to find adequate items of depreciation. That this depreciation is going on, and at a very rapid rate, is undeniable. It is treated of in the Railroad Commissioners' Report of 1896 (page 110), where the same view is taken of it as I have here expressed.

The Elevated Railroad Bill of 1897 recognized depreciation as a proper and necessary charge, by allowing the company to charge, among other things, "a reasonable amount for depreciation" as an item of operating expense (Sect. 10).

But I do not wish to be misunderstood as suggesting that, at this stage of the history of this enterprise, charges for depreciation and the accumulation of surpluses should be insisted upon to the exclusion of a reasonable prior dividend to the stockholders. If this were an old business, from which all the experimentation had been eliminated, and was as sure in its results as the ordinary manufacturing enterprise, then it might be fair and right to insist upon these items before allowing any considerable division of profits. But where you have an enterprise which is still young, the motive power for whose operation has been in use only for the last eight years, and concerning which nobody can pretend to say that the period of experimentation is yet past, — there ought to be a distinct reward and encouragement for the financial courage of those who have invested their money in the business. It is not like a business which is merely tolerated, and which therefore should be submitted to the strictest rules; but it is an enterprise of a public and beneficial nature, in which profit to the investor goes hand in hand with the accommodation of the community. Therefore I desire to be distinctly understood as saying, that, while these items of depreciation and surplus should ultimately become much more conspicuous than they now are, they ought not to be insisted upon at the present time to the exclusion of a fair prior dividend to stockholders.

But after all those five payments and charges have been made, — after the public has been satisfied with its taxes; after the creditor has been paid his interest; after the fair thing has been done by the employee in the shape of wages, and by the stockholder in the shape of dividend; after proper charges have been made for depreciation, and after proper allowance has been made for the accumulation of a surplus and a sinking fund, — then, and not till then, ought we to be asked to share the fruits of our industry with the public.

IX. FRANCHISE TAXES ELSEWHERE ARE NOT PRECEDENTS FOR MASSACHUSETTS.

Franchise taxes existing elsewhere — even in this country, much less in foreign countries — are not to be regarded as precedents for our action here. If there is any one thing connected with this whole investigation for which I am more thankful than another, it is that I have not had the opportunity to read one-half of the literature which I have accumulated on this subject. And what I have read, particularly with respect to foreign precedents, has so far tended to confuse my view of things, and has led me into such hopeless attempts to make allowances for differences in conditions, that I have found when I got through with them that I was not as far ahead as I was before I started. The evil of the day with respect to the whole question of the relations of the public to quasi-public corporations is, in my opinion, the fact that the literateurs, doctrinaires, and professors have monopolized the public attention with their views, which, though generally incorrect, nobody really familiar with the subject has taken pains to correct. They rarely make any, and never make enough, allowance for differences of conditions. And the great mistake which the companies engaged in the prosecution of quasi-public enterprises have made is that they have not established and maintained a literary bureau to enlighten the public, by answering, intelligently and fairly, the undigested and half-baked articles which have constantly appeared over the names of college professors and the like. Nobody who has looked into the question of the differences of conditions which obtain here and elsewhere will, I think, disagree with me in what I have said upon this point. Experiences and methods abroad are only valuable, if at all, so far as the conditions existing there and here can be successfully differentiated.

This idea of franchise taxes is not new, and it is not American. It was imported from abroad, I think. For example, we have heard a good deal about Berlin, and I have already mentioned some of the conditions which exist there. All I need to add now is, that, notwithstanding the fact that the Berlin company has paid large sums into the municipal treasury, it has at the same time continued to pay dividends in excess of 12 per cent. (now 15), and to accumulate a surplus sufficient to retire its entire capital stock at the end of thirty years. It is not because the Berlin managers are smarter than ours are. None of us would be inclined to dispute the proposition that if you give a Yankee the same chance in a business matter that you give anybody else, he will make just as much money out of it. It is not a matter of men, but of conditions. As Mr. Whitney said in 1891, if you will reproduce the conditions which exist in Berlin, so that the West End road can pay 12½ to 15 per cent. and accumulate a surplus fund to retire its capital, there will not be the slightest objection offered to the payment of whatever taxes that system may involve.

And the difference in wages is to be taken into consideration, among other things. I have some figures here, showing that labor abroad costs practically one-half what it does here. The most recent figures come from Glasgow, and are compared with the figures of the Metropolitan Street Railway of New York. It appears that the average wages in Glasgow are 78 cents a day, and the average wages in New York are $1.88 a day. The details are as follows, the figures in the case of Glasgow being furnished by the manager of the Glasgow Corporation Tramways, and in the case of New York by the president of the Metropolitan Street Railway Company. They have recently been published by Mr. Robert P. Porter, formerly superintendent of the United States Census.

GLASGOW CORPORATION TRAMWAYS.

SCALE OF WAGES.

		Per day
Point boys		$0 28
Horse turners		34
Trace boys	First six months	40
	Second six months	44
	Thereafter	48
Horse-keepers	First six months	80
	Second six months	82
	Thereafter	84
(And 24 cents for Sunday morning duty.)		
Sick horse-keepers	First six months	84
	Second six months	88
	Thereafter	92
Car-washers	First six months	84
	Second six months	88
	Second year	92
	Thereafter	96
Drivers and conductors	First six months	92
	Second six months	96
	Second year	1 00
	Third year	1 04
	Thereafter	1 08

The above rates apply equally to Sundays and week days.

METROPOLITAN STREET RAILWAY COMPANY OF NEW YORK.

SCALE OF WAGES.

	Per day
Point boys or switch boys	$1 00 to $1 25
Horse turners or changers	None.
Trace boys or tow boys	1 00
Horse keepers or hostlers	1 75
Sick keepers or hospital men	1 75
Car washers	1 50
Horse-car drivers	2 00
Horse-car conductors	2 00
Cable gripmen, first year	2 25
Thereafter	2 40
Cable conductors, first year	2 00
Thereafter	2 25
Motormen, electric, first year	2 25
Thereafter	2 40
Electric car conductors, first year	2 00
Thereafter	2 25

And it will be remembered that Glasgow furnishes the most conspicuous example of the municipalization of street railways. But in comparing results there with results here, our friends the professors forget — at any rate, neglect — to draw attention to the fact that there is a difference of more than 100 per cent. in wages.

In the language of Mr. Porter, " What shall it profit a man if he save a cent or two a day in car-fares, if by so doing he lose $1 a day in wages ? "

In other foreign cities street railway wages are as follows:

In Berlin, for twelve hours' labor, from 60 to 84 cents a day.

In London, for 15 to 16 hours' labor, from $1.08 to $1.44 per day.

In Paris, for 15 to 17 hours' labor, from $1 to $1.40 per day.

In Hamburg, for thirteen hours' labor, from 62 to 92 cents per day. (Per H. M. Whitney, 1891.)

Whereas, in Boston, for ten hours' labor in twelve, $2.25 a day for all street car operatives.

I have here another table, showing the relative wages paid in Boston and the other principal cities of the United States, the number of hours of work, and the pay per hour and per day. These figures were furnished me last winter by the general manager of the West End Street Railway Company.

TABLE K.

Wages Paid in Different Cities of the United States.

City.	Service.	Hours.	Wages per Hour.	Wages per Day.
			Cents.	
Baltimore		12	15	$1 80
Chicago	Motormen and conductors	10	21	2 10
"	Conductors, 1 cable-car	....	21	2 10
"	" 2 "	....	23	2 30
"	Gripmen	....	23	2 30
Minneapolis	Cable lines	10 to 12	17	1 70
"	Local "	....	16	1 60
Atlanta, Ga.		not regular	12	
Milwaukee		9 to 11	19	1 90
Kansas City		10	17	1 70
Toledo		9½	18	1 71
Omaha, Neb.		10	20	2 00
Philadelphia		12	..	2 00
Buffalo	First 3 months	10	15	1 50
"	Next 9 "	....	16	1 60
"	After 1 year	....	18	1 80

TABLE K. — *Continued.*

Wages Paid in Different Cities of the United States.

City.	Service.	Hours.	Wages per Hour.	Wages per Day.
			Cents.	
Cleveland	First year....................	10	18	$1 80
"	Thereafter..................	....	20	2 00
Indianapolis...	....	12	16	1 92
Cincinnati	....	12	..	2 00
Lowell	Regular men	10 to 12	19	1 90
"	Relief	....	18	
"	Spare	....	17	
Lawrence	....	10 to 12	20	2 00
Worcester.....	Regular men	9 to 12	20	1 80
"	Extra men	....	17½	
Providence ...	....	11	..	2 00
Fall River.....	First 6 months............	10 to 12	17	1 70
"	Second 6 "	....	18	1 80
"	Thereafter	....	20	2 00
New Haven ...	....	10	20	2 00
Lynn	....	10	..	2 00
Springfield ...	....	10	..	2 00
Boston	Regular men	10 in 12	..	2 25
"	Extra men..................	....	30	

Since the above table was furnished, I understand that the wages of conductors and gripmen on the cable cars in Chicago have been reduced; so that the wages paid in Boston are now as large as, and probably larger than, the wages paid elsewhere in this country or abroad, except in the cases of gripmen and motormen in the city of New York.

And then there are the cases, like Detroit and Toronto, where the road-bed is prepared for the company by the municipality, without charge, and the company is thus relieved from one of the most serious burdens which the Massachusetts corporations have to bear. In the case of Detroit, I am struck with the terms of an advertisement now, or very recently, appearing in the Boston papers, offering for sale to Eastern investors $200,000 of the first mortgage gold bonds of the Detroit Railway. In large type, and as the first item to which the particular attention of investors is directed, are these words: "Under its franchise this Company is not required to pave the streets or keep the paving in repair, but the City assumes this work and expense. The franchise and earnings are exempt from taxation." And yet you will find a dozen people up here next winter before the street railway committee, anxious to tell what wonderful things are accomplished for the public in Detroit and Toronto.

Mr. HAYES. — This is the Pingree road, isn't it?

Mr. BURDETT. — I think it is the remains of the Pingree road.

Mr. HAYES. — That is the three-cent-fare road?

Mr. BURDETT. — I am not able to answer that off-hand. I think the three-cent-fare road was absorbed into the other, was it not?

Mr. CRAPO. — It was the three-cent-fare road; but an operating agreement has been made by the two street railway companies, the one charging five cents and the other three cents, which has displeased the municipal authorities and has provoked litigation. The three-cent-fare road is the Pingree road, isn't it?

Mr. SULLIVAN. — "Detroit Citizens."

Mr. CRAPO. — The city furnishes the concrete foundation?

Mr. BURDETT. — I do not know anybody more competent to answer that question than Mr. Sullivan. He says it is the Pingree road. And I am told that even the bait in this advertisement does not catch the average investor, and that the bonds have not sold in the East as had been hoped.

Again, the relative density of traffic must be taken into consideration in judging of comparative results here and elsewhere. Density of traffic is the principal condition necessary for profitable operation. I submit a table showing the density of population per mile of track in ten principal cities in this country, and five principal cities in Europe.

TABLE L.

Density of Population per Mile.

Cities.	Population.	Miles of Track.	Population per Mile of Track.
I. In the United States.			
New York	1,851,060	458	4,042
Chicago	1,700,000	595	2,857
Philadelphia	1,047,000	462	2,266
Brooklyn	1,053,393	393	2,680
St. Louis	644,000	335	1,922
Baltimore	613,965	225	2,728
Boston and suburbs	782,839	290	2,700
Cleveland	368,895	269	1,371
Buffalo	360,000	143	2,517
Detroit	280,000	202	1,386
II. In Europe.			
Paris	2,500,000	184	13,587
Berlin	1,800,000	180	10,000
Glasgow	840,000	73	11,507
Liverpool	600,000	60	10,000
Manchester	520,000	50	10,400

Let me give another illustration of the inaccuracy with which figures from other jurisdictions are used as arguments against our system. The assertion was made by intelligent counsel before the street railway committee of the Legislature, that if the West End company had been subjected to the same system of taxation which prevails in New York, it would have paid nobody knows how much more in the form of taxes than it has. Mr. Warren analyzed that statement from official reports, and I therefore use him as a witness in that respect. In 1895 the gross earnings of all the street railway companies in New York were about $25,500,000, whereas the amount paid in taxes was substantially $1,000,000; in Massachusetts in the same year the total income of the roads from operation was rising $13,000,000, whereas the amount paid in taxes was nearly $500,000; from which it appears that while the gross amount of taxes of every kind paid by the New York companies was about twice as much as was paid in Massachusetts, their earnings were twice as large also. This does not seem to reveal any glaring differences in results, although they are arrived at in different ways.

The same thing is true in Ohio, which has also been cited here. A commission passed upon this question there a few years ago, and I cite a single case from their report. Cleveland is about one-half the size of Boston. The entire taxes, excises, and licenses (excluding paving) paid by the companies of that city for the ten years from 1884 to 1893 was only a trifle more than the amount paid in like taxes by the West End company in the single year of 1896; that is, the direct taxes of the West End road in 1896 were as large as the combined taxes of the Cleveland system for ten years, although Cleveland is one-half as large as Boston.

I have said that this was a foreign idea. I can go further and say that it has never found favor in Massachusetts. Attempts have repeatedly been made to work into our laws this idea of a special street franchise tax, but it has not been done, and has not been favored when it has been closely analyzed. Our legislators have never discovered any such similarity of conditions here and elsewhere as to induce them to make the experiment on our industries.

X. FRANCHISE BILLS REFERRED TO THIS COMMITTEE.

At this point I intended to discuss brifly the different bills which were referred to this committee, in addition to House Bill 445; namely, House Bill No. 49, House Bill No. 194, and House Bill No. 734; but time does not permit. It is sufficient to say of them, that Nos. 49 and 194 are practically the same, except that one applies to Boston only, and the other to the whole Commonwealth. They propose to put absolute discretion as to how much and in what form companies shall pay taxes into the hands of the boards of aldermen and selectmen. That is precisely what ought not to be done. As I shall presently attempt to show, the powers of local officers should not be augmented in this matter, but sound public policy requires that those powers should be abbreviated, or, at any rate, subjected to superior control. The other bill, No. 734, imposes a license fee or tax per car. Of course it goes without saying, that any such law as that would lead to a diminution of our facilities, and a decided change in the character of our accommodations. How long, for example, could our companies be expected to maintain entirely different equipments for winter and summer service, if they were to be taxed so much a car?

XI. REDISTRIBUTION OF STATE TAX ADVISABLE.

I want to suggest a redistribution of a portion of the franchise tax now paid by these corporations. Upon examination I think it will be found that that is one of the things which this committee might very well recommend. It is sound in theory, it is sound in law, and it would certainly tend to remove one of the points of friction which now exist. When a town has in its highways several miles of street railway tracks, and the assessors are unable to find a single stockholder of the corporation resident within the limits of that town, and the town accordingly loses any share in the franchise tax of the corporation, there is engendered a feeling of injustice and of friction. If, in the distribution of the franchise tax paid to the Tax Commissioner of the Commonwealth, that portion of it which is not to be credited to non-resident stockholders — that is, to stockholders living outside of Massachusetts — could be returned to the towns in which the tracks are located, instead of, as now, to the towns where the stockholders reside, it would, in my judgment, remove a good deal of the friction and dissatisfaction which now exist. Of course it is immaterial to us, in a money sense, where the tax goes after we pay it; but we think that such a redistribution would tend to improve the cordiality of the relations between the companies and the towns and cities in which they operate. Both parties would get along easier, better, and with less friction than they otherwise would. We therefore strongly recommend it.

And there is a precedent for this suggestion in the taxation of bank shares. The laws of Massachusetts provide that in the case of stock held in banks, whether United States banks or State institutions, the tax shall be assessed to the stockholders of the bank in the place where the bank is, and not where the stockholders reside. And if the bank pays the tax, it is given a lien upon the shares until the tax is repaid to the corporation by the stockholder. (Pub. Sts., ch. 13, § 8.) That law is a distinct recognition of the principle of readjustment which I have suggested in this case. If adopted in this instance it would not be a novelty in the legislation of Massachusetts.

Mr. CRAPO. — That is national. That is in the National Banking Act.

Mr. BURDETT. — Perhaps for that reason our law is as it is; but I am citing now the Public Statutes of Massachusetts. I presume they may be in their present form in order to conform to the United States law upon that point. At any rate, Mr. Crapo, it constitutes a precedent for the suggestion which I am now making to this Committee.

Of course, one may say, Why should not all the corporation taxes be distributed to the towns where the corporations are located, if the law is changed with respect to one class of corporations? For the simple, practical reason that the operations of a mill are carried on inside of the mill, and the operations of a bank are carried on inside of the bank; and inasmuch as that mill and that bank pay taxes upon their visible property, which is the only thing they have in the town or city where they are located, there is no reason for sending back any of the franchise tax to that town or city, because it has already received a tax upon all property of the corporation which it can fairly tax; whereas, in the case of street railway companies, they have, as a matter of fact, much property in the streets which does not come within the scope of "real estate and machinery," which are subject to local taxation, and citizens may well say, "Why should we not get taxes upon this property in the form of a portion of the franchise tax in which it is represented, rather than have it go to the towns where the stockholders reside?" The testimony — that of Mr. Ferguson particularly — has shown how in this State many of the largest companies yield nothing to the towns in which they are located, through the redistribution of the State assessment. We therefore recommend that change as one of the things of a practical kind which ought to be considered by you favorably.

XII. PRESENT SYSTEM OF FRANCHISE TAXATION FAIR AND EQUITABLE.

What I have said about the desirability of a redistribution of a portion of the franchise taxes paid by street railway companies in this Commonwealth does not involve the suggestion that the existing general scheme of franchise taxation should be changed. The present method is scientific, ample, and sufficient.

By Public Statutes, chapter 13, sections 38 and 39, all business corporations are required to make sworn returns of the names and residences of their shareholders, the number of shares owned by each, the amount of its capital stock, the par value and market value of the same, and a statement in detail of the property of the company subject to local taxation. The Tax Commissioner ascertains, from these returns or otherwise, the true market value of the shares, and estimates therefrom the fair cash valuation of the same, which is taken as the true value of the corporate franchise for the purposes of taxation. He also ascertains and determines the value and amount of all real estate and machinery owned by the corporation subject to local taxation, and for this purpose may take the amount or value fixed by local assessors or not, as he pleases.

The corporation is then required to pay annually a tax upon its corporate franchise, on a valuation thereof equal to the aggregate value of its shares as above determined, after making deduction of an amount equal to the value of the real estate and machinery subject to local taxation.

The statute then provides as to how the rate of taxation is to be determined. As a matter of fact, the rate, of late years, has been about the same as the local rate in Boston.

It will thus be seen that so far as stock represents the value of a company's property and franchises, the existing laws secure the taxation of all the property and rights of a corporation. Indeed, such tax may be, and frequently is, upon a valuation in excess of all the company's property. Referring to this state of the law, our Supreme Court in the case of

> *Commonwealth* v. *Lowell Gas Light Company*, 12 Allen, 76,

said:

> "There may be cases, therefore, where a corporation

> may be possessed of no personal estate whatever, the whole of its property being invested in real estate and machinery, and yet it may be liable to assessment under the provisions of the statute, because the market value of all its shares may exceed the value of its real estate and machinery; its franchise or corporate rights and privileges being estimated at a value beyond all the property in its possession, as shown by the price for which its shares are sold in the market."

XIII. PUBLIC OWNERSHIP AS A PANACEA.

If you will bear with me, I want to say a few words about what is suggested by many people nowadays as a remedy for all the difficulties about which we have been talking; namely, public ownership. I beg to assure you that I am not going to argue that important question. It would be an unkindness of which I am not capable at this late hour. But I may properly touch upon it briefly, because it is seriously entertained by many people.

So far as the street railway companies are concerned, I need only say that they have no selfish interest in the subject, except a single one which I will mention presently. I cannot let this occasion pass, however, without stating my individual dissent from the whole doctrine and theory of public ownership and management of quasi-public corporations.

To mention no other considerations, it is sufficient to say that public management of business enterprises requires at least two great changes in existing conditions. In the first place, it requires a change, amounting to a revolution, in our American, particularly our New England, ideas of the proper functions of local government. We have heretofore believed that such government should meddle as little as possible in the daily affairs of the individual — that we had an inalienable right to be governed as little, and not as much, as possible. We have heretofore been of the impression that the liberty of the individual was a distinguishing characteristic of our system, as contrasted with the paternal care of the citizen by the governments of Europe. We have indulged the conviction that private enterprise should be encouraged, and governmental enlargements resisted. But all this must be changed, if we are to accept the new dispensation. The government, as it is said, must " touch the citizen at as many points as possible ; " the more he is " touched," the more interest he will take. And while the present mayor of Boston, in a recent magazine article (" Arena " for ——, 1896), practically admits the failure of municipal government on a large scale in this country, principally because of a lack of interest by non-official citizens, he proposes the paradoxical remedy of imposing upon the inattentive private citizen, who cannot now be induced to take an interest in public matters, a still more numerous and important list of subjects. I confess I am unable to follow the logic of that suggestion.

The other necessary change is in the character of our civil service. This is certainly open to infinite improvement, particularly in large cities.

It was only yesterday, that, in one of the current magazines, I found an article by the House chairman of the Congressional committee on post-offices and post-roads. I had previously supposed that that great branch of the Government, the income of which is enormous, had been running at an annual loss of about seven or eight million dollars. But I found that the annual deficit was about $15,000,000, and that the loss upon second-class mail matter alone was in the neighborhood of $40,000,000. It appears that only two of the four classes of mail matter carried in the mails pay their way. Letter postage pays so well that it practically maintains the whole department; but second-class matter which costs fifteen cents a pound to handle is carried for one cent a pound. One case is cited in the article referred to where it cost the Government $24,000 (exclusive, as I suppose, of salaries of officials) to carry second-class matter for which it received $3,000 only. How long would such a state of things be permitted to exist if the mails were carried by private corporations? How long would it take the Adams Express Company, for example, to remedy so glaring a violation of the first principles of business? Only so long as it would take to issue a notice of an increase in rates. But, under political control, the great Post-Office Department of this Government is powerless to remedy the difficulty. Everybody recognizes the situation, but the political influence of the powerful interests which profit by it successfully resists the making of any change. And so the people of this country must go on indefinitely supporting a losing service for the benefit of certain publishers and politicians.

The foregoing is only one illustration of the results of political management of public or quasi-public undertakings. I tremble to think of the size, the character, and the power of the political machine which would be constituted by turning the street railways of Massachusetts into politics, particularly the great railway here in Boston. This alone would add about 5,000 names to our already ample civil list, and a political motorman on the front platform and a political conductor on the rear platform would give us a realizing sense of the beauties of public ownership.

And if street railway extensions have gone to the danger point under private management because of the demands of the public for extra accommodation, what might reasonably be anticipated when every proposed extension were made an issue in ward politics?

And if the present private managers of street railways are constantly beset to provide "jobs" for the friends of politicians, and are forced in self-defence to keep labor ledger-accounts with local statesmen, what would be the condition of things if these politicians could bring their pressure to bear on official managers, whose permanency of tenure would depend upon the favor of the applicants?

If insignificant departments in the city of Boston have been made snug harbors for countless shipwrecked mariners on the sea of politics, what superb accommodations would be furnished to that class of patriots if five thousand places on the municipal street railway system were within their reach.

No. The first thing to do is to reform our politics. When our civil service becomes anything efficient, and when the only test for public employment shall be honesty and fitness, then — but not till then — ought we to think of subjecting our municipal machinery to any greater tests. And it is precisely because of the character of the English and Scotch civil service, and of what may fittingly be called the lack of character of the American civil service, that such good results are obtained abroad and such poor results are obtained here with respect to public undertakings.

It is a sobering and discouraging fact, brought out clearly by the Honorable Joseph Chamberlain, that the municipal expenditures of Birmingham are only about one-fifth or one-sixth of those of Boston, although the two cities are almost identical in population, in length of streets, in public buildings, and the like.

We do not wish or need to copy England in all things; but we certainly can learn of her much to our advantage in the matter of municipal civil service.

But, as I have said, the companies have only one selfish interest in this matter: they do not want to be thrown into competition with the municipalities. A private company run for profit cannot successfully compete with a municipal department run for politics. The unnaturalness and unfairness of any such competition is too evident to require argument. If, therefore, the cities and towns of Massachusetts want to own and operate street railways, the companies are willing that they should do so. The companies have no such bonanza that they are unwilling to surrender it. But if any town or city wants to go into the prosecution of this business, compel it by law *to take all existing property* employed in the same business. This will relegate the parties to their rights under the Constitution, by force of which the companies will be paid just compensation for what has been taken from them. I do not suppose there is a single case in

Massachusetts — certainly not more than one — where it would be wise public or corporate policy to inaugurate a competition between private and municipal street railway enterprises.

So, gentlemen, if you make any recommendation upon the subject, we simply ask you to provide that in case any towns or cities decide to engage in this business, they shall take the property of existing companies and pay therefor just compensation. And if they take the main lines of a railway, require them to take all lines, whether in the particular city or town, or not; otherwise the trunk might be severed from the members. But if they take a branch line only, the trunk might still survive.

The CHAIRMAN. — I don't want to take up your time, but there is one point there which I should like to know, for it seemed to me to stand as an almost insuperable bar in the way of that. We speak of municipal ownership, but municipal ownership must be confined, of course, as I understand it, to lines within the municipality. One municipality cannot own lines in another.

Mr. BURDETT. — It can, if the statute gives it the right, as it has done in the case of gas and electric light plants.

The CHAIRMAN. — What would be the effect, for instance, if that were applied here, of the city of Boston owning lines in the city of Somerville?

Mr. BURDETT. — Well, there has been an ingenious scheme suggested for that case, by which the different towns and cities should purchase the lines in common, and should have boards of directors apportioned to the population, or to the car-miles run, or something of that sort. In other words, these reformers regard that as a mere mechanical detail, and work it out to their entire satisfaction. In the case of electric light and gas companies, the towns are expressly authorized by statute to take the entire lines of the company, if they take any of them, whether they are in the same town or not.

XIV. REVOCABILITY OF LOCATIONS.

I have thus far omitted any mention of the subject of the revocability of locations — and I have omitted the mention of that subject purposely, for the reason that we would not regard a change in the law with respect to the revocability of locations as an adequate consideration to the companies for the imposition upon them of additional taxes. The consideration which they desire for the imposition of additional taxes is relief from paving and the care and maintenance of streets. But the revocability of locations stands upon a different ground. That is a matter which requires reform in the interests of the public quite as much as in the interests of the corporations.

One of the express duties imposed upon this commission by the statutes under which it is acting, is "to consider the need, if any, of legislation in this Commonwealth to establish a more fixed tenure of franchises of street railways, and an equitable method of taxing the same." There seems to be an implication in the statute that the two things necessarily go together. The soundness of that implication we deny. The fact that these locations should be made more permanent is no reason why there should be any provision made for a more equitable method of taxing the same. I hope to make this clear.

Locations are now practically irrevocable — that is, the good ones are. I think I mentioned this morning the case of Malden, cited by Mr. Whitney in 1891, where they wanted him to pay taxes for the privilege of running there, and he said, "Revoke all our locations in Malden, and we will be better off." But there never was a city government in Malden, and there probably never will be, which would dare to do such a thing, if the result of it would be to deprive the people of the accommodations which the road now gives them. Therefore we do not need protection against the peril of actual revocation.

But in practice, more lately than heretofore, because of the fact that these roads touch each other at vital points and it would be easy to let one road run over the tracks of another, or to give one road a location previously enjoyed by another, it has become the fashion in some places to threaten the revocation of locations. If I am not incorrectly informed, that threat is held over the road in New Bedford, and the purpose is not disguised. If the locations are revoked, it is expected that a new bargain, so to speak, can be made between the company and the city. The city has no idea of giving the location to anybody else, but feels that if it can revoke the existing locations it can exact from the existing company more favorable terms than those which now exist. In the more usual case the threat is made in order to compel the company to do something somewhere else, or to do something outside of the requirements of the law.

The law is very simple upon that point. It says that locations may be granted with such " restrictions " as in the judgment of the selectmen or the aldermen the public interests may require. But these local officials have in practice enlarged the word " restrictions " so that it is made to include "terms and conditions" also. To all practical intents and purposes the law might just as well read that locations shall be granted upon such "terms, conditions, provisions, and agreements " as the selectmen or the aldermen may in any case decide. And yet the companies submit to them. You may well ask why. Simply because they have to. The demands of the public for extensions are so persistent, and the relations between the companies and the public would be so strained in case the companies refused to make them, that the companies yield in almost every instance rather than submit to what might be the consequences. So that, as I say, these locations are practically irrevocable, though legally revocable, and this contradictory state of affairs leads to much that is undesirable in the relations of these companies with the public.

A change of the law in this respect is as much in the public interest as it is in the interest of the corporations. In the first place, it would prevent the abuse of the authority of local officials which is now going on all over Massachusetts. It would remove the temptation to impose terms and conditions, under a statute which only authorizes the imposition of restrictions.

But there is another condition which should be changed. Cases have been cited here in evidence, and might be multiplied, where foreign bankers have been ready to take the securities of these corporations at good prices, but finding this bed of quicksand under the whole structure, to wit, this legal revocability of locations, have refused to touch them at any price. The result is, as those best informed will tell you, that the securities of railway corporations in Massachusetts — I am speaking now particularly of bonds — are practically always sold below their real value, and below the price which they would bring if it were not for this one matter of the revocability of locations. It is manifest that if a bond worth $100 is sold at $95, the public gets only $95 worth of accommodation, for which it has to pay interest on $100. The public is therefore paying and will continue to pay a larger price for the accommodations furnished than would otherwise be charged. If this change in the law were made, the savings banks of Massachusetts might well be authorized, as they are not now, to invest in the securities of these companies, which would for that reason appreciate in value. This subject is discussed in the Railroad Commissioners' Report of 1896, on page 113.

XV. WHAT CHANGE IN LAW AS TO REVOCABILITY OF LOCATIONS SHOULD BE MADE?

We do not suggest that locations should be irrevocable. We do not think that necessary or, perhaps, advisable. It would, of course, give the securities of the companies the best possible basis of value, but, on the whole, it probably would not be advisable. What we object to is the fact that the unrestricted legal right to revoke now rests in the hands of local officers, subject to all the prejudices and passions and limitations which surround such offices. After a great deal of discussion and comparison of views we have finally come to a very simple conclusion, which if adopted we believe will prove to be a solvent of the whole difficulty. We would simply have you take Section 8 of the West End Act of 1887 (chapter 413) and apply it throughout the State.

Mr. CRAPO. — Make a general law?

Mr. BURDETT. — Make a general law, practically the same as that applicable to the West End to-day. I will read that section:

> "SECTION 8. No location and no alteration or revocation of location of a street railway, and no authority to run cars over or use the tracks of another street railway, whether surface or elevated, in the cities of Boston, Cambridge, or in the town of Brookline, shall hereafter be valid until approved by the board of railroad commissioners."

We do not, I think, care anything about the provision as to the authority to run cars over the tracks of another company, and perhaps it had better not be included. But if we could have a simple act to the following effect: "*No location and no alteration or revocation of location of a street railway shall hereafter be valid until approved by the board of railroad commissioners,*" we feel that the whole difficulty would be solved. Such a statute would apply to all locations, original or extended, and to all alteration and revocations of locations. It would include within its scope all cases which would arise, and would furnish a remedy inclusive in its character.

I confess I had a great deal of sympathy with the gentlemen who came in here from such towns as Belmont and

Weston and other purely rural towns, and complained that three selectmen, who may have been elected without any reference to the question of the occupation of the streets of those towns by street railway tracks, had absolutely final authority upon that question. Different ways might be suggested of remedying that difficulty. One would be to require, as in New York, the consent of abutters; but that has not been found to work well elsewhere, as I think you are aware, particularly where unanimous consent is required, which gives rise to the practice of blackmail. If the consent of a smaller proportion of abutters is required, the difficulty is encountered as to where to draw the line. The only other remedy would seem to be, in the absence of some such provisions as I now suggest, an appeal to the people themselves; and yet it would probably be found that in nearly all cases the poll-tax payers would vote for the introduction of the road even if the property-owners were practically unanimous against it. While the poll-tax payer is entitled to just as much consideration as anybody else (and generally gets a great deal more), yet it seems a pity that he should have the power to impose a street railway upon the property-owning residents of a strictly rural town, who have gone there for the express purpose of escaping the steam road and the electric road, and everything else that makes life in busy communities such a strain upon the nerves.

Nor would the consent of a majority of the people be safe in all cases, for other reasons. Suppose a road is needed to connect two important towns, and to do so it must go through the corner of an intervening town. The people of this intermediate town might say, " We do not want a road here. We do not want the first rail laid here, because it may be only the forerunner of many others, and we do not want an electric railway in this community." But if a disinterested outside tribunal should be clearly of the opinion that that road ought to be built, and that the only practicable and proper route is the one which would take it through a portion of the intermediate town, the people of that town ought not to be given a veto upon the progress of events.

Take also the cases where the roads are dissatisfied with the terms and conditions imposed upon them by the selectmen, and the cases where the threat of revocability is held over them if they refuse to do something which the law does not require; in those cases also you will find that the solvent of the whole difficulty would be an appeal to some disinterested outside tribunal, which would pass upon the question without fear or prejudice. Such a tribunal would be the Railroad Commissioners, though we suggest that board merely as a matter of convenience. Some other board might do as well. We should not favor the county commissioners, because we do not think they would be sufficiently removed from local atmospheres to render them strictly judicial in their action.

But the Railroad Commissioners, or whatever other State tribunal were clothed with the authority, would take into consideration all these questions relating to the public necessity or convenience, the character of the town or city in question, the demands of public travel, and the like, and decide accordingly. Everybody interested should have a full right of appeal to them, under the law suggested.

In short, we can suggest no other such universal solvent of the whole question as the simple statute which I have outlined.

XVI. REVOKED LOCATIONS SHOULD BE PAID FOR.

We feel that in case the final revocation of a location does come, it should be paid for. It is the thing which gives value to the stock and bonds of the corporation; it is the thing upon the strength of which the money of the citizens of our own and other States has been invested; and if, by a revocation of location, you cut the throat of a company, as you would do in many cases, it is no more than fair that that should be regarded, as it is, as an actual taking of the property of another.

The CHAIRMAN. — What is the law in that respect now, Mr. Burdett? There has been no such case, but to-morrow, if the town, we will say, of Woburn came forward and revoked the franchise of a corporation in their town, that practically takes its property. Can they do that without paying compensation, under the law as it stands to-day?

Mr. BURDETT. — You have asked me a very serious question of constitutional law, Mr. Chairman.

The CHAIRMAN. — It is one we have got to confront.

Mr. BURDETT. — I had supposed, Mr. Chairman, that in view of the fact that the statute under which the companies accepted their locations was perfectly specific, to the effect that the local authorities might revoke these locations at any time they pleased, that would be an answer to any proposition which might be advanced by the companies that they had been deprived of their property. It would be said that they had taken their rights subject to the statute, and that the statute always contemplated the possibility of a revocation.

The CHAIRMAN. — Then it amounts to this, that they would have a right then to pull up their rails and pull up their property and sell it for what it would bring, and they must be satisfied with that?

Mr. BURDETT. — Yes.

Mr. CRAPO. — Does not the statute require that the railroad company, if the franchise is revoked and the rails are taken up, must put the street in the same condition that it was before the track went down?

Mr. BURDETT. — It does; yes, sir.

Mr. CRAPO. — Isn't that a part of the statute?

Mr. BURDETT. — Yes, sir. So that there is a penalty upon the company for the revocation, rather than a compensation. Whatever the expense may be, the company must bear it under the law as it stands to-day.

If you will permit me to call your attention again to House Bill No. 445, you will see that it recognizes this principle of compensation for revoked locations. This is the bill which has the intelligent support of those members of the community who have given really careful attention to this subject; and in so far as we can agree with them, I think we will have accomplished the feat of bringing the public and the corporations together. Section 5 of this Board of Trade Bill is as follows:

> "No revocation or alteration of the location of the tracks of any street railway company, except temporary changes or alterations of location reasonably necessary for repair of streets or other municipal exigencies, shall hereafter be made, provided said street railway company shall have complied with the provisions of this law, except by consent of the railroad commissioners, and upon payment of reasonable compensation to the company for the expense and loss or damage to property caused by the revocation or alteration of such location; but no compensation shall be made for the franchise or for any loss of profits or benefits therefrom."

So. you see, the framers of that bill agree with us as to the non-revocability of locations except with the assent of the railroad commissioners, as well as to compensation for revoked locations.

The only objection to that provision is that perhaps it does not recognize fully enough the actual measure of damages. It says simply that the company shall be compensated for "the expense and loss or damage to property caused by the revocation or alteration of such location." That may be sufficient; but it seems to me that the law ought to call for a payment of the value of the location for the purposes of its use. Take a company like the Lynn & Boston Railroad, for example. It may be said to outline a bottle, with Boston at the upper end of the neck. Suppose you should cut the neck of that bottle off, what compensation would it be to that company to pay it the expense caused by the removal of a mile of its track, or the damage to the property removed? That would be wholly inadequate to compensate the company for its actual loss and damage.

XVII. APPEALS FROM LOCAL AUTHORITIES.

I will now discuss, as briefly as possible, a question which has been suggested by a member of this Committee; namely, whether a right of appeal from local officers on the question of the revocability of locations would involve any infraction of the right of local self-government.

We do not suggest any change in the original jurisdiction with respect to the question of locations. That belongs, we think, fairly and properly, within the province of local officers. They are the best judges, in the outset, of what ought to be done in this respect. But we suggest an appellate jurisdiction, so that their action may be reviewed by other public officers. I have heretofore referred to selectmen and aldermen as local officers. I use the word "local" simply in its geographical sense, and not at all in its legal sense; because, in this regard, these officials are, in law, not local but public officers.

It is not disputed to-day, although I was taken to task last winter by one of the Boston newspapers for stating the proposition, that the roads and highways of Massachusetts do not belong to the various municipalities, but are in every sense of the word public highways, open to all the people of the Commonwealth, and for that matter of the entire world. There is no such thing as title in them by the municipalities. The municipalities have nothing in them which they can sell and nothing which they can lease.

It is equally certain, upon the decisions in this State, that the officers who deal with these highways, with respect to their use by quasi-public corporations, do so in the capacity, not at all of local officers, but altogether as public officials. The case of

Young v. *Yarmouth*, 9 Gray, 366,

is a leading authority upon this subject. That was a case where a town was exempted from liability for an accident happening by reason of the location and maintenance of a telegraph pole in the street, put there by authority of the selectmen; because these officials had acted as public and not as local officers in authorizing the erection and maintenance of the pole. The Court said that the provisions of law applicable to that class of cases clearly indicate the selection by the Commonwealth itself of a legally constituted public body, to pass finally upon all questions of locations of that character in the public streets. To the same effect, see

Commonwealth v. *Boston*, 97 Mass. 555.

Finally, in the case of

Cambridge v. *The Cambridge Railroad Company*, 10 Allen, 50,

the Court passed upon the precise question of the legal status of local officers with respect to street-railroad locations. It will abbreviate and make more clear what I desire to say upon this point if I read what the Court said in that case as to the duties and authorities of aldermen and selectmen with respect to street-railway locations.

> " So far as they are intrusted with any power in relation to the location and construction of the road, and other matters connected with its use, these duties are specifically enumerated and defined, and they are to be performed by them, not as officers acting for or representing the city, but as a body of men on whom certain duties of a ministerial or quasi-judicial nature are by law devolved. These duties have no necessary or essential connection with those which they are called on to perform in their official capacity, as a branch of the city government. They might have been imposed as well on any other body of men, if the Legislature had seen fit, although it was doubtless wise as a matter of convenience and expediency that they should be performed by those who, in their official connection with the city, would be more likely to discharge them without difficulty and to the advantage of the public. But we look in vain for any provision of law which authorizes them to act in behalf of the city."

In the case of

Union Railway Company v. *Mayor and Aldermen of Cambridge*, 11 Allen, 287,

Judge Hoar, in commenting upon the powers of aldermen and selectmen as to street railways, says:

> "This control is given to these municipal officers, not as representing a conflicting interest, but as independent bodies, charged with the duty of protecting the rights and promoting the convenience of the whole public."

If it was wise in the early days of the Commonwealth to intrust this jurisdiction over public highways to public and not local officers, there is still more reason to-day for preserving that jurisdiction. These ways have ceased to be what they used to be before the introduction of electric tramways — roads over which occasional travellers passed on foot or in carriages from town to town. They have become in the fullest sense of the word great public highways of inter-urban traffic, and more reason exists to-day than ever before why the use of them should be dealt with by public and not by local officers.

Such being the law and the history of the matter in Massachusetts, there is absolutely no infraction of the theory of local self-government involved in the suggestion which we make, that the action of these public officials, to wit, these selectmen and aldermen, should be reviewed by another body of public officials, representing a little more largely the entire public.

XVIII. TERM FRANCHISES INEXPEDIENT IN MASSACHUSETTS.

You will have noticed that my suggestions have not included the proposition that the rights of these companies should be fixed, under any system, for a given term of years. I have not advocated, and I do not advocate, anything in the nature of term-franchises for these corporations. I am aware that they are becoming somewhat fashionable in some jurisdictions. I am aware that in the charter of Greater New York they are provided for, but I am not prepared to accept what comes from New York upon this subject as good authority for Massachusetts. The same idea prevails somewhat generally abroad, but under such a dissimilarity of conditions as to make the practice valueless as a precedent for us.

Let me state briefly one or two of the objections which obtain to it here in Massachusetts. In the first place, a general law to the effect that the franchises of all such corporations shall continue for a given number of years hereafter is impracticable, unless the term is made so long that it will extend beyond the due-dates of every outstanding obligation. Otherwise you would impair, or attempt to impair, the obligations of the contracts existing between the companies and their bondholders. If any legislation along that line is attempted now, it would necessarily have to take the form of a provision that, in each individual case, the term should be fixed, perhaps by the local authorities in the first instance, or by the Railroad Commissioners upon appeal, and that the term in each case should be fixed in view of all the conditions obtaining in that case. As in the other case, the term would need to run beyond the last due-date of existing obligations. But such an attempt, I take it, would hardly be regarded as advisable.

If we may judge by results elsewhere, as compared with those obtained here, term-franchises would not be expedient in Massachusetts.

All things considered, Massachusetts enjoys as low fares and as good accommodations upon its street railway system as exist in any other State or country in the world. Its equipments and accommodations are, in fact, superior to those of any foreign country, and at least equal to those of any State in this country. The development of these companies has been greater in

Massachusetts, in proportion to the business to be done, than anywhere else in the world, and, as I have shown by statistics, this development has been in the interests of the public rather than in the financial interests of the companies. And all this has been accomplished at the minimum public charge in the way of capitalization. No better reason for this can be suggested than that the laws of Massachusetts have permitted and encouraged and brought about this state of things.

I take the following figures from an article on "Street Railways and their Relations to the Public," published in the "Yale Review," for May, 1897, by Mr. Charles E. Curtis. It is worth reading, and is one of the very few articles upon this subject which I have found it worth while to read. There is more well-digested information with respect to the condition of things here and elsewhere in that article than in any other I have seen.

In Rhode Island street franchises are granted for terms of twenty or twenty-five years. It is the only New England State where term franchises are given.

Mr. HAYES. — State grant, isn't it?

Mr. BURDETT. — Grant by legislation, yes. The capitalization of street railway companies, as represented by stock and bonds, in the State of Rhode Island, under the system of term-franchises, is $119,103 a mile; whereas in Massachusetts, under our system of indeterminate franchises, it is $52,311. The average in all the New England States (excluding Vermont, unknown) is $54,777; in New York it is $182,756; Pennsylvania, $139,456; in the whole United States, $95,000; in Great Britain, $53,000. You have not yet heard a figure as low as that in Massachusetts, but I will give you one, and that is in the Dominion of Canada, where capitalization per mile of track is $50,200, slightly less than that in Massachusetts. But I find upon consulting the report of the Railroad Commissioners for 1897 (p. 104) that the capitalization per mile of track in Massachusetts is now $46,393 instead of $52,311, as stated in the "Yale Review."

Massachusetts and Connecticut have laws regulating the issue of bonds. In those States the bond issue averages $20,000 a mile, in Pennsylvania $40,000 a mile, in New York $91,000 a mile.

Notwithstanding the fact that capitalization has been kept down to the minimum point, let me give you some results, showing the amount of accommodation which is given in Massachusetts, as compared with other places. Great Britain has less than 1,500 miles of street railways for 40,000,000 of people, or one mile for every 26,666 people. Massachusetts alone has almost as much, or about 1,300 miles for 2,500,000 population, or one mile for every 2,000 people. Judged by mileage and population, the street railways of Massachusetts give more than thirteen times the accommodation afforded by those of Great Britain. Massachusetts has only one-thirtieth of the entire population of the United States, but it has one-twelfth of all the street railway mileage of the country. And in this connection you must bear in mind, what the Railroad Commissioners said in their report for 1896, page 95, that "Density of traffic on a street railway system, other conditions being similar, is a measure of its earning capacity."

Any change of this system, which has worked so well, would be disturbing and probably disastrous. It would only be applicable in case the street railways of Massachusetts were just beginning. While it may be true that the development of the future will be very large, even as compared to the development of the past, it must be remembered that more than $60,000,000 have been invested in this enterprise up to the present time, and any attempt to change a system which has worked so well would be a very dangerous experiment to try. Judged by results to the public, rather than by results to the corporations, what system on earth can be said to have produced as satisfactory results as are shown here in Massachusetts? The idea, therefore, of changing the present indeterminate franchise, if you may call it such, of these companies, is inexpedient and unwise, in the absence of necessity, which does not exist, or in the absence of the clearest demonstration of the superior merits of some other system.

I have now discussed, Mr. Chairman and gentlemen, all the matters of prime consequence which I had in mind; and I can only express, with the profoundest gratitude, my appreciation of the fact that you have sat here for something like five mortal hours and heard me through.

The CHAIRMAN. — Well, Mr. Burdett, this has been to me very interesting and instructive and suggestive all through, and I think you would put us under further obligation if you could find time to put this in print — your tables and everything. In the first place, it will be very useful to us, and I think it will not be wasted on the Legislature at the time our report is made. I think it will be very desirable that all your tables and everything should be printed in a form which we can examine at our leisure.

Mr. BURDETT. — I anticipate that that will be done.

XIX. MINOR MATTERS.

I have on my minutes a number of minor matters which I was not going to discuss, but which I was going to call to your attention as perhaps worthy of your consideration if you should decide to go outside of the lines which I have suggested as a proper limit of your inquiries. But time does not permit me to do more than mention them.

One of these suggestions is that street railway companies should have the right, for certain purposes, to take land by eminent domain. The avoidance of grade crossings would be the principal of these purposes. These companies should also have the legal right to purchase, if not to take, land outside of public highways in certain cases, for the location and maintenance of their tracks. In some, perhaps many, cases this would be the more economical method for the companies, and would, of course, avoid the crowding of existing highways or the widening of them at public expense.

One of the subsidiary subjects to which I should, if time permitted, address myself with the greatest interest, is that of the rule adopted by the Railroad Commissioners in appraising street railway property under recent legislation. The standard or rule of value adopted by them, and by other similar boards of public officers in this Commonwealth, is, in my humble judgment, entirely wrong. It is the reproducible or so-called "structural" value of the plants and properties. This is certainly not the rule of value adopted in our courts or in commercial transactions; and, so far as I am able to discover, it is confined to Massachusetts, and is a novelty here except in proceedings before these boards upon questions of capitalization. But the curious thing about it is, that it is a rule which does not work both ways. If the question before the Board is that of impairment of existing capital, or the issuance of new capital, it is applied in all its rigor; but if the question is as to what sum shall be fixed as the minimum price at which new stock can be sold by the corporation, an entirely different rule, to wit, the rule of market value, is adopted. The anomalous result follows, that, upon the same application of the same company to the same tribunal, its property is valued for one purpose by one rule and for another purpose by an entirely different rule.

A striking instance of this anomaly has just been presented. Upon the application for the approval by the Board of the lease of the West End to the Boston Elevated Railway Company, a considerable impairment of existing capital was found, although the stock of the corporation was selling in the open market at almost double its par value.

It may be that the Commissioners deem themselves bound by the provisions of existing laws to apply these inconsistent rules of valuation. But however that may be, the law should be made clear that only one rule — that of commercial or market value — should be applied in any case for any purpose.

Much might also be said in favor of the proposition that companies which have been put to large expense (not counting inconvenience and loss of traffic) to accommodate purely municipal works, such as the laying, repairing, and removing of sewers, water-pipes, and so forth, should either be directly paid therefor, or should be given credit for the expenditures thus made by them as against any payments or taxes which may be required of them for the use of streets. While I cannot now argue this proposition, I commend it to your careful and deliberate consideration.

XX. RECAPITULATION.

If I should recapitulate what I have said, you would find that it has consisted of a few main propositions. Having endeavored to ascertain the character or nature of the use which is made of highways by these corporations, and traced the law of roads down to the present time; and having demonstrated, as I think I have, that these companies do not occupy a position which is unique among the various methods of transporting passengers through the public roads, and that, if they do, they make ample and sufficient returns to the public for any privileges which they enjoy; and having, as I hope, demonstrated the proposition that there is in fact and in law no reason why they should be subjected to any peculiar treatment in the method or amount of their taxation, even if they were able to support further burdens, which is not the fact; and having discussed somewhat the different plans which might be adopted in case there were to be a readjustment of the burdens which are now supported by these companies, — I came down to a few principal suggestions: first, that all locations, alterations, and revocations should be passed upon in all cases by the Board of Railroad Commissioners or some other disinterested public tribunal

— a proposition which does not involve any violation of the principle of local self-government, and is in the interests of the public quite as much as in the interests of the companies. I have also said that, in consideration of a release from present obligations to pave and care for streets, we might be willing to submit to some tax upon gross income, or, preferably, — having in view prevailing public sentiment, possibly sound public policy, — a smaller tax on gross income, combined with a division of the profits of our enterprise judged by dividends. I have suggested the form which these provisions should take, and some of the limitations and conditions which should be embodied in any such legislation.

Incidentally to the foregoing principal suggestions, I have also advanced the idea that the present franchise taxes of the companies should be distributed to the towns and cities in which the companies are located, instead of to those in which the stockholders reside; that locations which are finally revoked should be regarded, as they really are, as takings of property, to be paid for; that the companies should be given the right to take or purchase land for certain purposes; that all official valuations of street railway properties should be required to be made upon a commercial instead of a structural basis; and that the companies be given credit, as against any new exactions in the nature of taxes, for the expenses to which they have been put to accommodate purely municipal undertakings.

Again, gentlemen, I thank you for having given me such careful and patient attention.

HOUSE . . . . No. 475.

REPORT OF THE SPECIAL COMMITTEE

APPOINTED TO INVESTIGATE

The Relations between Cities and Towns and Street Railway Companies.

FEBRUARY, 1898.

Commonwealth of Massachusetts.

[Chapter 509 of the Acts of the year 1897.]

AN ACT TO PROVIDE FOR THE APPOINTMENT OF A COMMITTEE TO INVESTIGATE THE SUBJECT OF THE RELATIONS BETWEEN STREET RAILWAY AND MUNICIPAL CORPORATIONS.

Be it enacted, etc., as follows:

SECTION 1. The governor, with the advice and consent of the council, shall, within thirty days after the passage of this act, appoint a committee of three suitable persons, one of whom he shall designate as chairman, to investigate the subject of the relations between cities and towns and street railway corporations, the taxation of street railways and their franchises in this Commonwealth and in other states and countries, and the need, if any, of legislation in this Commonwealth to establish a more fixed tenure of franchises of street railways, and an equitable method of taxing the same.

SECT. 2. The said committee shall forthwith proceed to investigate and consider the relations existing between cities and towns and street railway companies, the taxation of street railways and their franchises in this Commonwealth and in other states and countries, and shall consider what legislation, if any, is needed to establish a more fixed tenure of franchises of street railways, and an equitable method of taxation thereof in this Commonwealth.

SECT. 3. The said committee shall have the power to summon and compel the attendance of witnesses and may administer oaths to such witnesses, and may establish rules and regulations for the conduct of its business, and shall be provided with suitable quarters by the sergeant-at-arms in the state house or elsewhere. It may employ experts and all necessary clerical and other assistance, as may be authorized by the governor and council. Before incurring any expense it shall from time to time make an estimate of the probable amount of expense to be incurred and shall submit such estimate to the governor and council for their approval; and no expense shall be incurred by the committee beyond the amount so estimated and approved. The chairman of said committee shall receive as his compensation the sum of three thousand dollars, and each of the other members the sum of twenty-five hundred dollars. One-half of the expense of said committee shall be borne by the several corporations owning or operating street railways in this Commonwealth, according to their gross earnings, and shall be apportioned by the tax commissioner, who, on or before the first day of July in the year eighteen hundred and ninety-eight, shall assess upon each of said corporations its just proportion of such expenses, in proportion to its said earnings for the previous fiscal year, and such assessment shall be collected in the manner provided by law for the collection of taxes upon corporations.

SECT. 4. Said committee shall complete its investigation on or before the first day of January in the year eighteen hundred and ninety-eight, and shall report the result thereof, in print, to the general court, on or before the first Wednesday in February in said year. If said committee recommends any legislation, it shall accompany its report with drafts of such bills as are necessary to carry such recommendations into effect. The powers of said committee shall terminate on said first Wednesday in February.

SECT. 5. This act shall take effect upon its passage. [*Approved June 11, 1897.*

On the 7th of July, 1897, the Governor nominated CHARLES FRANCIS ADAMS of Lincoln, WILLIAM W. CRAPO of New Bedford, and ELIHU B. HAYES of Lynn, to compose the Committee, and they were confirmed by the Council on July 14, and were qualified on July 20. On the 2d of August Walter S. Allen of New Bedford was appointed Secretary of the Board.

REPORT.

The Special Committee on Street Railways, appointed under the provisions of chapter 509 of the Acts of 1897, submit the following report: —

The inquiry the Committee was directed to make proved, when fairly entered upon, far more comprehensive and laborious than was at first anticipated. A vast amount of experience of a most varied character, bearing on what may be termed the street railway problem in its different phases, has, during the last twenty-five years, been accumulated in nearly all portions of the civilized world; but no comprehensive study and comparison of results has been made, nor is there any publication or document, official or otherwise, containing a sufficient body of reliable data. On the general subject there is, it is true, much to be found scattered about in various official reports and investigations, as well as in almost innumerable short treatises, pamphlets and magazine articles; but these, in the comparatively rare instances where a degree of reliance can be placed upon them, have as a rule either been written for a specific purpose and in advocacy of some special theory, or they are of merely local interest. There exists, also, a vast and varied amount of popular misinformation as to results alleged to have been reached elsewhere, more especially in certain European cities. As regards these, indeed, statements are made of a character so wholly misleading that the Committee finally reached the conclusion that it was safe to accept nothing unless verified by examination on the spot; for, even where the facts are in the main as alleged, varying conditions make the conclusions naturally to be inferred from those facts usually deceptive, and almost invariably in greater or less degree inapplicable here.

While, therefore, two members of the Committee devoted themselves to investigations in this country and in Canada, one member went to Europe, there to make such inquiries as might, under the circumstances, be practicable. As respects information, the foreign conditions proved similar to those at home, though, if possible, even more pronounced; at a sufficient cost in time, patience and money, a vast amount of interesting and instructive experience was attainable; but the statistics are even less perfect than in America, and no comprehensive report or official publication exists.

The Committee has no disposition to appear to exaggerate the importance of street railway developments, and the interest felt in them; but as the investigation proceeded it became apparent that not only was the whole civilized world at work on improved municipal transportation, but every considerable town in both hemispheres is acquiring experience of more or less general value in regard to it, while at the same time seeking to learn the results of experience elsewhere. This is more obviously true of material and scientific appliances, — cars, motors, inductors and track laying; but in its other and more abstruse aspects the problem is of the utmost hygienic and governmental importance. As a public agency the electric street railway is now fast revolutionizing the character of urban life, spreading it over a wider area and subjecting it to new influences; while entailing, in such items as paving, sewerage and police, a vastly increased municipal expense. Under these circumstances, while there is a wide-spread call for a comprehensive report on street railways, its preparation implies a very considerable command both of time and money, as well as of governmental machinery. To make such a report of general value, it would, in the judgment of the Committee, be necessary that the person preparing it should be not only in official communication with the whole consular department of the government, but he would himself have to give from a year to eighteen months of time to local examinations, and the comparative verification of the statements which reached him. It is needless to say that neither the time nor the means at the disposal of the Committee sufficed for work of this description. On the other hand, it is distinctly work which might most properly as well as advantageously be made a feature in the next national census, and the Committee proposes at the proper time to call to it the attention of those in charge of that work.

Under the terms of the act ordering the inquiry, it was confined to certain phases of the problem. Limited specifically to what may be termed the franchise relations of street railways and to questions of taxation, it was not to include the mechanical or scientific apparatus in use, the facilities afforded, or, except incidentally, financial and economical results. The present report will, therefore, be devoted to a brief discussion of principles, and a concise presentation of conclusions reached.

Though the street railway is in legislation as well as in the popular mind usually associated with the steam railroad, the two are, in law as well as in mechanics, quite distinct. Both are comparatively recent outgrowths of the tramway, which first came into use in the English mineral regions more than two centuries ago; but, while the railroad was a use of steam power in a new direction, and a pure consequence of the discovery of that power, the street railway was merely an obvious development of the old tram applied to the omnibus route. In its case the process of evolution was, therefore, in the earlier stages quite simple. As the modern municipalities expanded, the demand for better facilities of urban, or, as it would be termed in Europe, intra-mural, transportation, made itself increasingly felt. Naturally the street car and the tramway at length suggested themselves as convenient agencies, — the street car being nothing more nor less than an improved omnibus, and the tramway a special feature in the pavement of the public way; a feature adapted, it is true, to the car's special use, but not necessarily excluding from general use the portion of the street in which it is laid. This is all the street railway was fifty years ago, when first laid; it is all it is now, — an improved line of omnibuses, running over a special pavement. If this fact be firmly grasped and borne constantly in mind, the discussion, and the principles underlying it, are greatly simplified. The analogy throughout is with the omnibus line, and not with the railroad train; with the public thoroughfare, and not with the private right of way. Upon this distinction, indeed, all the questions now to be discussed, whether of taxation or of franchise privilege and obligation, will be found to turn.

The economic idea of regulation by means of competition through private ownership was long at the basis of street railway, as of railroad, legislation. Having a strong hold on the public mind, this theory, in the one case as in the other, had, slowly and wastefully, to be outgrown. The motive power in use with the street railway for very many years also underwent no practical change. Steam engines of various descriptions were tried, and, indeed, may still be seen in use in some European cities, — notably in Birmingham, England, and Florence, Italy, — but their use proved unsatisfactory; while the cable system, though still well adapted to certain conditions of topography and street movement, was too elaborate and costly for general adoption. It was not, therefore, until 1888, or practically within the last ten years, that the development of electricity as a motor introduced a new feature into street railway mechanism, and gave to the system an increased impetus, the far-reaching influences of which have as yet but in part made themselves felt.

The rapid development and increasing importance of the street railway as a public-service agency have meanwhile brought a new class of questions to the front, — a class of questions already considered in connection with the supply of water and of gas, but which now assume a somewhat different aspect. The idea of regulating street railways through competition of lines in private ownership, often for considerable distances of necessity using the same tracks, has by degrees been abandoned. The modern practice, as well as theory, is the consolidation of lines in a given municipality under one ownership, that ownership to be held to strict accountability as a recognized public agency. Through such a system it is believed the most economical results, public as well as private, can be attained, — a much longer carriage for the same fare on the one side, and the avoidance of duplicate machinery and organization on the other. Single ownership of some sort, public or private, may therefore be accepted as a condition of the problem. Competition is eliminated from it.

The service to be rendered, and the agency through which it is rendered, involve, however, in this case a peculiar and to a degree exclusive use of municipal thoroughfares. Not only has a special feature in the pavement to be provided and kept in repair, but the movement of vehicles on that special pavement is such as often to necessitate, through street widening and otherwise, provision of space; for, as the street car cannot turn out of the way of other vehicles, other vehicles must have room provided in which to turn out of the way of the street car. Under existing conditions also the street car is kept in motion by an apparatus of cables or wires, — underground or overhead, — established for its sole and separate use, and which can neither be duplicated nor used in common by others. When it is added that provision in all these respects has to be made on the surface of the most frequented thoroughfares and principal business streets, the importance and difficulty of the questions sure to arise at once suggest themselves.

The varied experience of the last forty years has already developed, or is now developing, three distinct lines of treatment of the relations between the street railway and the municipality. The first is the natural outcome of the original idea of private ownership of both track and vehicle; the improved omnibus, in other words, runs over a special pavement, laid down by the omnibus company in the public way for its exclusive use. The company owning and operating the line is organized under a State charter, but holds its location in the streets under a municipal permit, usually granted for a fixed term of years, but in Massachusetts perpetual in theory, though in point of fact revocable at any time. This is complete private ownership, and it exists not only in America, but is almost equally well known and recognized in Europe. The second line of development is a recurrence to the original principles of ownership; the street and its pavements belong to the public, the vehicles that run upon the pavements to private parties, whether individuals or corporations. No distinction of ownership or control is under this system recognized between pavements, whether of wood, stone, concrete or iron, or a combination of two of those materials or of all; in any and every case the pavement is laid down and cared for by the municipality, which thus in no way surrenders or compromises its control of its own streets. Having laid, and owning, the pavement, it does, however, concede to a company, on such terms as may have been agreed upon, the exclusive right to run vehicles for a greater or less period of time on a specially prepared part of the pavement. In this case the vehicles and motive power only belong to the private company. The third line of development is in the direction of full public ownership, — what is known as municipalization. The analogy of the public water and public gas service is here followed, and both private ownership and private management cease, the municipality running the omnibus as well as controlling the street and owning the pavement. In the course of its investigations the Committee has enjoyed opportunities of studying each system in actual operation, and has heard the merits of each explained by managers and advocates.

In a general way, and subject to limitation and exceptions, it may furthermore be said that, while the first, or private, ownership system is that most commonly in use in America, in Germany the development is in the direction of the second, or mixed, system, and in Great Britain there is a strong and growing tendency towards a thorough trial of the last system, known as municipalization. But whether, in the process of development, the tendency is towards the adoption of one or of another of these three systems, it seems to be recognized everywhere as a fundamental principle that the application of the system is of distinctly municipal or local concernment, the community as a whole having only a broad interest in the principles involved. In other words, in Europe, as in America, the use made of streets and thoroughfares, as well as their care, is essentially a municipal matter. The town or city, whether technically owning the public ways or not, is responsible for them, and, under certain broad general regulations, is free to control and regulate them in such way as it sees fit. The use of the highway for street railway purposes, in Europe, as in Massachusetts, was at first an innovation, and, as such, legal provision had to be made for it; but when that provision was made, either by general law or special enactment, it became largely an extension of municipal, and not of state, functions and control. The officers of the municipality were authorized to permit the occupation of streets for tram or railway purposes under provisions of law; but the control of the municipality over them was subjected to the least possible interference from without. In passing upon every question which may arise this principle of municipal street control also should be clearly kept in mind. That the street railway, like the thoroughfare it partially occupies, has in many instances outgrown municipal limits, and so become an instrument of inter-urban travel and communication, is apparent, and this fact also has to be recognized as introducing new elements into the problem; but the fundamental principle of local control is thereby no more destroyed in the case of the railway than in the case of the street itself.

Starting, then, from this basis, the present elaborate street railway system has by degrees been evolved. The whole development has taken place within the last half-century, and vastly the greater portion of it within the last ten years; it has, moreover, been essentially American. That the system now in use, whether in Massachusetts or elsewhere, is in all respects perfect, no one, of course, would maintain; that it is rapidly developing in answer to a public demand is apparent.

So far, however, as Massachusetts is concerned, it may not be out of place here to say that a comparison of systems does not tend to show, either as to practical workings or results accomplished, any grounds for serious criticism. As a working machinery for the daily accommodation of vast numbers of persons, the street railway companies of the Commonwealth fulfil their function quite as well, with as little friction and at as reasonable a cost as any other similar machinery elsewhere which the Committee has had an opportunity to study. On this head, as already intimated, it is not safe to accept loose assertions, no matter how positively made or frequently reiterated, as evidence of what really exists. In every community, persons claiming to speak as authorities are apt to be in evidence declaring that somewhere else, in this case in Baltimore perhaps, or in Toronto, in Glasgow or Birmingham, or in Berlin, an ideal condition of affairs has been reached, in which perfect street railway accommodations, low fares, rapid transit, and contented officials and employees are working in harmony with a thoroughly well-satisfied municipal government, to the expenses of which the railway company contributes a liberal share, while at the same time paying reasonable dividends to its stockholders. The members of the Committee have only to say that, if such a street railway Utopia anywhere exists, they have in the course of their investigations failed to find it. That the street railways of Massachusetts have, as a whole, cost much more than they could now be replaced for, is as indisputable as it has been unavoidable; that in some cases they have been over-capitalized, through questionable processes of financiering, is more than probable; but these, after all, are to a greater or less extent incidents inseparable from an unusually rapid development along new lines and in untried fields.

And this statement at once suggests a consideration of importance, — a consideration, in fact, going to the very root of the matter the Committee was appointed to investigate. It is not merely a question of greater or less expenditure, but, if the account is to be correctly balanced, what has been gained through that expenditure, or would have been lost had the expenditure not been incurred, must also be considered. To institute a comparison, for instance, between the street railway transportation of Boston as at present developed and that of Birmingham, of Glasgow or of Berlin, is so absurd as to suggest ignorance. The appliances in use in the European cities named may, and probably do, answer the demands there made upon them; but they pertain to conditions of urban life and of urban movement wholly different from those which now prevail in Massachusetts. A single illustration will suffice. Glasgow has a population of some 800,000, served by 73 miles of tramway, measured as single track; Leeds has some 400,000, served by 27 miles; Boston has nearly 500,000, served by 220 miles. In the neighborhood of 400,000 passengers are each day carried on the Boston street railways, while the combined railways of Glasgow and Leeds, serving a population more than twice as large, carry but 300,000. In other words, with more than five times the population to each mile of street railway track, the number of passengers daily carried in the two cities of Great Britain is only three-fourths of those carried in Boston.

While the Committee was conducting its investigation in Great Britain a sanitary congress, at which some 800 delegates were present, was held in Leeds, one of the cities above referred to. The eminent medical authority who presided over the sessions of this congress referred in his opening address to the distribution of urban population over a wider area as one of the most crying needs of the day. In regard to it he used the following language: "What is urgently needed in Great Britain to-day is, firstly, drastic and radical legislation, by which local bodies may be able to acquire land compulsorily, on paying full compensation, for building workmen's houses, and then quick and cheap early travelling, rendering it possible for city workmen to live in the surrounding country."

So far as the work here referred to is concerned, that of distributing urban population over a wider area, with all the results, direct and indirect, therein implied, a most superficial examination will suffice to show that Massachusetts is far in advance of any portion of Europe. This has, too, in large degree been brought about in an extraordinarily short time, not by "drastic, radical legislation," such as that contemplated in Great Britain, but through the rapid and energetic expansion of the street railway system, seen in the comparative statistics just given. That in effecting this expansion much costly experimenting, not always successful, has been paid for, is undeniable; but it remains to be proved that the work, though done through private corporations, either cost them, or through them cost the community, more than from a public point of view it was worth, or a portion even of what it would cost if done in the way suggested at the Leeds Sanitary Congress. This is the other side of the account; and that the work in Massachusetts represented by the items which appear on this side was done in response to a public demand, at once outspoken and urgent, is matter of common knowledge.

One feature in the franchise granted to the Massachusetts companies immediately attracts notice; from the beginning they were, and still almost invariably are, in terms perpetual, while in reality legally revocable at the discretion of local boards. In this respect they are peculiar, almost anomalous; for, as a rule, both in this country and in Europe, concessions have been granted private companies for fixed periods of time only, during which the franchise, or concession, is in the nature of a binding contract. These contracts, especially in European cities, are almost infinite in their variety. They run from periods of fourteen to a hundred years, and, like leases between private parties, are framed so as to provide in advance for every contingency likely to arise. In Massachusetts, on the other hand, the grants of location have, as a rule, been of the simplest possible character, drawn in the most general terms, and with a noticeable absence of technicalities, reservations and safeguards against contingencies; and yet, while by these locations the local boards apparently granted the corporations rights in perpetuity in the public ways, the law, at the same time, reserved to the boards the power to revoke those rights at discretion.

In theory, such a franchise is to the last degree illogical. It can be compared only to a lease, terminable at will by the lessor, and without provision for the compensation of the lessee. Such a system, if suggested, would naturally be pronounced impracticable, if not absurd, and it would be assumed that private capital would never embark in ventures so lacking in the element of permanence and security. Yet in Massachusetts this has not proved to be the case; nor can it be said that the system has, for the half-century it has been in use, worked otherwise than on the whole satisfactorily.

A more fixed tenure of franchises is, however, by the terms of the act creating the Committee, one of the two points it is especially instructed to consider. The substitution for the present indefinite concessions of a specific and binding contract, covering a fixed term of years, setting forth the rights and obligations of the parties thereto and containing a rule of compensation for the purchase of the property in case of failure to renew, at once suggests itself as a measure of reform; and yet, in the course of the protracted hearings before the Committee, it was very noticeable that no such change was advocated by the representatives of the municipalities or of the companies, nor, apparently, did the suggestion of such a change commend itself to either. Some amendments in detail of the existing law, and partial measures of protection against possible orders of sudden, ill-considered or aggressive revocation were suggested; but it was evident that, while the municipalities wanted to retain as a weapon — a sort of discussion bludgeon — the right of revocation at will, the companies preferred, on the whole, a franchise practically permanent, though never absolutely certain, to a fixed contract tenure for a shorter term, subject to the danger of alteration at every periodic renewal.

It is a generally conceded principle, that in dealing with matters of public policy it is not wise to disturb existing methods, no matter how illogical or inconsistent with theory they seem, provided they work reasonably well in practice. The community is accustomed to certain ways of doing business and reaching results; and if the results, looked at as a whole and through a sufficient period of time, are satisfactory, it is questionable wisdom to scrutinize too closely either the logic or the symmetry of the ways in which those results are reached.

The term-franchise, or concession for a fixed contract period, is, moreover, open to serious objections. As the members of the Committee found wherever they studied it in operation, in this country or in Europe, it is apt to operate practically as a check on enterprise, and a bar in the way of any development involving the investment of fresh capital or of earnings which might be divided. The inducement is strong to get the largest profit possible out of the time conceded, without increasing the value of a system a renewed lease of which will at some specified time be under negotiation.* This has been markedly the case in Great Britain. The term-franchise has there been universal since 1870, and the rights of the municipalities are so very carefully protected that their best interests have been systematically sacrificed. The municipalities have, in fact, been so afraid they would in some way be out-bargained that they have as a rule fairly over-reached themselves; and now, after the lapse of twenty years, they are naturally served by undeveloped lines, with antiquated appliances, simply because they made it the distinct interest of the companies operating those lines to provide nothing better. The Massachusetts franchise, with its terminable-perpetuity feature, may be illogical, — it seems, in fact, a contradiction in terms, — but it recognizes an ownership under limitations, and the holder of the franchise works with the incentive of gain. It is the familiar case of the free-holder as compared with the lease-holder; and human ingenuity does not seem as yet to have devised any tenure under which men, much less corporations, will develop a business with the same degree of enterprise when they are working for the ultimate advantage of others as when they are working for themselves. Indeed, there is no feature connected with the street railway development of Europe, and especially of Great Britain, as compared with that of America, which is so noticeable as this. The companies are there all in the nature of tenants, or lease-holders, trying to get everything they can out of their concessions during the term for which they hold them. They care nothing for developments of which they are not likely to enjoy the results. In the end, therefore, the community suffers; and it is this sense of loss, and consequent discontent with the situation, which is the chief inducement held out for the experiment of municipalization; although, on the other hand, it is recognized that municipalization may involve an attempt at development on political rather than on business principles. The same thing was noticeable in the American cities visited by the Committee. The term-franchise here, too, has been productive of dissension, poor service, scandals and unhealthy political action. There is probably no possible system productive of only good results and in no respect open to criticism; but, in fairness, the Committee found itself forced to conclude that the Massachusetts franchise, which might perhaps not improperly be termed a tenure during good behavior, would in its practical results compare favorably with any. Certainly those results are as immeasurably as they are undeniably better than the results as yet produced in Great Britain.

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* "The street railways of Berlin have only a traction service of horses. It is the wish of the municipal authorities to have electricity, by the conduit system, substituted; but the chief company, Der Grosse Berlin Pferde-Eisenbahn Actien-Gesellschaft, is unwilling to incur this increased expense, for the reason that after a number of years the street constructions of all kinds revert to the city, and the company does not care to forfeit an unnecessary amount of property by investing the fresh capital needed to make these improvements." (Extract from the special report of Osborne Howes, Jr., Rapid Transit Commissioner, on the transportation of passengers in and around the cities of Europe, Appendix A (page 184) of the report of the Rapid Transit Commission of 1892.)

While, therefore, the tenure by which the Massachusetts street railways now hold their locations is calculated to excite uneasiness in the minds of security holders, yet that uneasiness is, so far as the public is concerned, not without its compensating advantages in management. Questions involving hardship and litigation may at any time present themselves, and this possibility, there can be no doubt, does stand in the way of the sale of street railway company securities at a price they would otherwise command. The investigations of the Committee have not, however, led its members to believe that the public would derive benefit from the substitution of any form of term-franchise now in use in place of the prescriptive Massachusetts tenure. But, even if such a substitution were on the whole deemed desirable, it would be futile to propose so radical a change, for existing companies at least, if, while no serious public detriment can be alleged, neither companies nor municipalities appear in advocacy of it. As was apparent at the hearings before the Committee, what the companies desire is a tenure as nearly as possible in perpetuity, with a restricted power of revocation only in the hands of the municipalities; what the municipalities desire is to retain, as a weapon convenient to have at hand, the legal power of revocation at will.

In the course of the hearings before the Committee, attention was called to certain features in the existing law, which, it was urged, might be changed to advantage. On behalf of the general public, it was asserted that, heretofore, concessions of great value had been much too freely granted by those temporarily in charge of the affairs of municipalities; that insufficient franchise obligations had been imposed on the companies; that no provision had been made in the franchises to compel companies to bear their reasonable share of expensive improvements rendered necessary by locations freely given them; that practically no limits had been set to profits, or provision made in case of excessive profits for a division of the same, or a reduction of fares; and, finally, that locations had been, and now occasionally were, made in streets and thoroughfares without any, or without sufficient, regard to the wishes and feelings of residents and property holders thereon.

On the part of the corporations it was alleged that the existing system was defective mainly through the insufficient protection afforded against the arbitrary revocation of locations, and the constant imposition of new and unjustifiable burdens through the threat of such revocation. They claimed, and submitted evidence to show, that the profits of the system were not unduly large, and that the constant changes necessitated by the advance of scientific apparatus, and the demand of the public for new appliances, the best accommodations and the most effective service, were such as to tax to the utmost the resources of the companies, while preventing any accumulation of profits beyond what was necessary for purposes of renewal,— if, indeed, proper provision for renewal could now be made.

So far as the greater part of these grounds of complaint is concerned, whether advanced on behalf of the public or by the corporations, and however well founded they may be, they do not, in the judgment of the Committee, call for any considerable changes in the law as it now exists.

The Committee is aware that different views exist on the meaning of the present law. By some it is held that the "restrictions" of street railway locations in the several statutes relating thereto are limited, and that any additional terms exacted or conceded are, in legal phraseology, *ultra vires*, and cannot be enforced in law. This, however, is not the view usually taken, and, confessedly, the practice has been and now is widely at variance with it.* Such a literal construction of the statute, if sound in law, would result in a noticeable breach in that principle of local self-government which is the basis of the Massachusetts polity. It would, indeed, carry the principle of centralized State control in this matter far beyond the point even, to which it is carried in the countries of continental Europe.

In the view of the Committee, however, the present Massachusetts system, while somewhat undefined and even contradictory in character, — as is not infrequently the case with a system built up by degrees as the work of a succession of legislative bodies, — tends to treat this whole matter of street railways as one of local concernment. It is regarded as simply a question of the use which a given municipality sees fit to make of its thoroughfares. The municipalities are held to be the best, and, indeed, within broad limits, the only, judges of that use; just as the railway corporations are the best, and again the only, judges as to the degree of protection afforded by the grants they accept. If municipalities or corporations choose, from over-eagerness or for other reasons, to enter into ill-advised or improvident agreements, which they afterwards repent, that is their affair; and the officials entering into such agreements are responsible to their constituencies, whether the body of citizens or the holders of the company's stock. It certainly is not the part of the Commonwealth either to prescribe the terms of grants, or, after they are made, to examine those terms with a view to seeing that they contain nothing of which the parties to them may thereafter repent. In this view of the matter, it would seem, on the one hand, that improvident concessions of an apparently perpetual character may have been, perhaps were, made by the agents of the municipalities, and valuable privileges were conferred, not coupled with corresponding obligations. On the other hand, in their eagerness to secure these valuable concessions and privileges, the corporations may have seen fit to regard the reservation which accompanied them as a mere matter of form. Under the system in use in Massachusetts, it was, as it now is, in the power, as it was and is the duty, of those representing both municipalities and companies to insist on more specific and better-considered grants, covering, if thought best, a given term of years, and binding in law during that term.

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* "The law is very simple upon this point. It says that locations may be granted with such restrictions as in the judgment of the selectmen or the aldermen the public interests may require. But these local officials have in practice enlarged the word 'restrictions' so that it is made to include 'terms and conditions' also. To all practical intents and purposes the law might just as well read that locations shall be granted upon such 'terms, conditions, provisions and agreements' as the selectmen may in any case decide." (Argument of E. W. Burdett, counsel for the Massachusetts Street Railway Association, before the Committee, page 103.)

Taking this view of the principles of polity and the public and corporate interests involved, the Committee recommends certain changes in the present law, intended to make that law conform more closely to established practice and existing conditions. On the one hand, it would grant the local authorities explicit power hereafter to impose such terms and conditions as they deem the public interests demand, on original grants and locations in the localities over which they have jurisdiction; while, on the other hand, it would protect companies whose tracks have been already located from new and perhaps unreasonable conditions sought to be imposed in grants of alterations and extensions, which may be called for not less for public convenience than by corporate interests. These suggestions are incorporated in the draft of the act herewith submitted.

With the above exceptions, the Committee has seen nothing which would lead it to suppose that any detriment, so far as the public is concerned, has been or is likely to be sustained under the present system, except in one possible contingency. The representatives of the corporations asked that, throughout the Commonwealth, appeal should be allowed from municipal authorities ordering the revocation of a street railway location to the Board of Railroad Commissioners, as is already the rule within the territory served by the West End Street Railway system. (Acts 1887, chapter 413, section 8.) While it is true the revocation of a location may be arbitrarily ordered, not only at a possible serious loss to a railway company, but at no inconsiderable inconvenience to a local public, the local public can generally be trusted in such cases to make its influence felt on its representatives for its own protection. So far as the corporation is concerned, the concessions made to it are general, valuable and unlimited. The corporation might perfectly well have declined to accept the concessions coupled with the power of revocation, and refused to lay its tracks. With a full knowledge of what it was doing, it accepted the location, coupled with the right of revocation; and it is not easy to see on what ground, still holding the location, it can now ask to have the counterbalancing burden of revocation limited, as being liable to abuse, but without being able to instance numerous cases of such abuse, or, indeed, to show that the relations between the municipalities and the street railway companies had, on the whole, or indeed in any respect, been less friendly or productive of fewer good results in Massachusetts than elsewhere.

Cases may, however, at any time arise in which a dispute between a municipality and a corporation, and consequent revocation of the location of the latter, might occasion serious public inconvenience outside of the locality in which the difficulty occurred. It has already been pointed out that street railways are now largely agencies of inter-urban communication, or travel between towns. The same company not infrequently operates roads in several connecting municipalities. Under these circumstances, it would seem but a fair degree of protection that no outside community should find itself suddenly deprived of its accustomed railway facilities by the removal of rails and wires as the result of a complication in some neighboring town.

An examination of the street railway map of the Commonwealth discloses the fact that such a provision of law would, though nominally limited in its operation, be practically general. All the considerable street railway companies operate routes in two or more cities or towns; and it would be a simple matter for the few smaller companies which now would not come under the protection of such a law to extend their lines so as to bring themselves within it. Such being the case, it has seemed to the Committee better, under the existing condition of street railway development, to establish one general rule for all. A provision to this effect, authorizing the Board of Railroad Commissioners to revise the findings of the local boards, has accordingly been included in the draft of an act herewith submitted.

The allegation that local authorities are in the habit of granting locations in streets against the wishes, or without due regard to the wishes, of residents in such streets, will next be considered. The Committee is not disposed lightly to recommend exceptions to the principle of local self-government. In the great majority of cases the municipal authorities are unquestionably better judges than an outside tribunal of both the wishes and the requirements of those dwelling in a given locality. Nevertheless, cases have arisen, and may again arise, where thoroughfares laid out with great care, and developed at large expense by those dwelling upon them, have been needlessly selected, against the remonstrance of residents, for railway location, when other routes, to the use of which no objection would be made, were almost equally available. Provision to meet such cases seems not to be unreasonable. The Committee, therefore, proposes, and herewith submits in the accompanying draft of an act, a provision that, where a majority in value, or a certain minority in numbers, of those owning real estate immediately abutting on any public thoroughfare protest in writing against the grant of a location for a street railway in such thoroughfare, the location shall be valid only after a hearing before the Board of Railroad Commissioners, and on the approval of that Board.

The extensive and costly street improvements often necessitated by the operation of street cars in the narrow streets of New England towns is a question which was often reverted to in the hearings before the Committee. In order to grant a location in it, a street not infrequently needs first to be widened; for other purposes it is sufficiently wide already. In this case it does not seem reasonable to impose the whole cost of the widening on the municipality. It is true that voluntary contributions have been made by street railway companies for such purposes, but the question may be raised that such contributions are *ultra vires*. Moreover, in cases of original location the proportion of cost which should be borne by the railway company should be clearly within the power of the municipality to determine. If the street railway corporation does not care to accept its location if burdened with such cost, it may refuse it.

A somewhat different situation, though of the same general character, arises when the growth of a community brings about an over-crowded condition of streets. The over-crowding is clearly in part caused by the necessities of the street car service. The widening of such streets is also a distinct benefit to the railway companies. In such cases, also, contributions to cost have heretofore not infrequently been made by railway companies, without any question being raised or intervention of the courts invoked. The technical legality of such transactions is, however, open to question; and it is but natural the companies should, when they can, seek to avail themselves of this point as an excuse for not contributing to a public improvement which they see must be made, but of which they prefer to secure the benefit without helping to bear its cost. Under the construction put upon the existing law, also, contributions by the companies for this purpose cannot be represented by additional issues of capital stock. If made, they must be provided for out of the company's net earnings, and, presumably, at a sacrifice of dividends. While, therefore, it is on the one side not unreasonable to give to the municipalities the right to assess upon street railway companies, as upon other beneficiaries, a certain proportion of the cost of such improvements, on the other side, the money so expended should be looked upon as part of the cost of construction, and provision made to capitalize it on that basis. The Committee recommends legislation to cure this defect; and has accordingly incorporated in the draft of the act herewith submitted certain provisions from the laws relating to the assessment of betterments.

X Reference has been made to the three lines of ultimate development into which the relations of street railway interests and municipalities seem now in this and other countries to be naturally working: that of (1) regulated private ownership; that of

(2) the municipal ownership of a permanent way, to be operated by a private company as lessee; and (3) municipalization. The first of these lines of development is that through which the street railway interests of the Commonwealth have grown up, and its advantages and defects are well understood. The chief objection to it is obvious, — it necessarily involves a divided control of streets, resulting in continual jealousies, misapprehensions and disputes. While, because of its apparent simplicity, as well as from the analogy of the steam railroad, it naturally suggested itself in the early and experimental stages of street railway development, it certainly does not now commend itself as a permanent or scientific arrangement. Even should it be continued indefinitely, the Committee is clearly of opinion that it would be conducive to a better state of affairs were the municipalities to assume full control of the streets, meeting all charges for paving, for street cleaning, etc., and receiving therefor from the companies a net annual money payment in lieu of work in kind. This would be in the nature of a commutation, — a pavement and cleaning tax to be paid by the company in consideration of the special provision made in streets for its exclusive use. While clear as to the expediency of this readjustment of burdens, the Committee has had great difficulty in devising a satisfactory basis on which to recommend it. The cost of paving, etc., is included in the accounts of the street railway companies under the general head of "(35) Repair of Roadbed and Track," and the items for paving are not separated from others. On many country roads, also, the obligation to pave is nominal; in city thoroughfares it is heavy; while in other cases the amount of work to be done and expense incurred depend on the terms of particular locations. Again, the cost of removing ice and snow is another obligation which pertains distinctly to the care of streets. The tracks of the street railways are in the nature of sidewalks and footpaths. In winter the public convenience demands that they should be immediately broken out, and kept constantly clear. In the case of the track, as in that of the sidewalk, the snow and ice, when removed, are necessarily thrown, temporarily at least, upon the travelled way. If they cause an obstruction, it is obviously the duty of whoever is legally responsible for the condition of the travelled way to remove them;

and for that condition the municipality is, of course, responsible. This has proved a fruitful source of misunderstanding between the companies and the town and city governments ever since the street railway system originated; and the singular spectacle has not infrequently been witnessed of one gang of men, in private employ, shovelling snow from a track, while another gang of men, in public employ, shovelled it immediately back. In this case two propositions seem to the Committee equally clear: first, that it is the business of the city or town to keep its streets properly clear of obstructions; and, secondly, that, under the circumstances, the street railway companies should, in this specific instance, compensate them for so doing. Yet, in the matter of removing ice and snow it is, under the New England climatic conditions, difficult to reach any rule of compensation, the expense actually incurred year by year varies so greatly. In certain years it is nominal, in others it is extremely heavy. Nevertheless, in the opinion of the Committee, some rule should be established.

After a careful study of such data and statistics as could be found bearing on this subject, the Committee has formulated certain provisions in the draft of a proposed act herewith submitted. They establish the legal obligations of the parties, restoring to the municipalities, in so far as may be, the full control of their public ways, and making them solely responsible for the condition of those ways, both as respects pavement and freedom from obstruction; and, on the other hand, so far as the street railway companies are concerned, the present obligations for labor or pavement work are commuted into fixed money payments, in the nature of a tax. While the fairness of this commutation as respects amount, etc., cannot be demonstrated mathematically, it has been reached after careful study of the reports, and is believed to represent approximately existing conditions reduced to an intelligible basis. But, whether it does so, or in some respects fails quite so to do, in its working the benefits will greatly outweigh any possible shortcomings, if it removes from the relations between municipalities and the street railway companies a fruitful cause of ill-feeling, recrimination and arbitrary dealing.

The system of private ownership of street railways, in the shape and to the extent now in use in Massachusetts, is not, however, that which most commends itself, in theory at least, to the judgment of the Committee. A better and more logical system would seem to be that already described, not unknown in Great Britain and elsewhere, but to which the experience of Germany is more especially tending, — a system under which the municipality both owns and controls the whole surface of its streets, whether paved with other material or with iron, and leases to a private company the right to run vehicles over prescribed routes on tracks therein specially provided.

The process through which this result has been, or is now being, brought about in foreign countries is simple and well worth the careful consideration of American municipalities. It is as follows: In the first place, European street railway franchises, or concessions, are never perpetual. They are always granted for a fixed term of years, this term being sometimes established by general law, and sometimes by special governmental authority. The average term is perhaps in the vicinity of twenty years; and the details of the individual concessions made under the general authority are then, as matters of local concernment, worked out in an almost infinite variety of forms, — the result of protracted negotiations between the officials of each municipality and the representatives of a company, or the concessionaires, as they are termed. When this agreement is thus completed, executed and approved by the proper ministerial authority, it constitutes a binding contract, enforceable on both sides during its continuance, and subject to change, termination or extension only by mutual consent, and in the way in it provided.

It is not necessary now to discuss the practical working of this system. It varies greatly under different conditions, depending largely on the traditions, character, political methods and business capacity of communities, but with a continual tendency towards some approved standard. For example, the municipal contracts recently entered into by Berlin and Frankfort, and that now under consideration in Hamburg, are in Germany regarded as models, and consequently are in the main adopted in other German municipalities. These contracts, as showing the extreme caution practised in foreign countries in dealings between street railway companies and municipalities, are printed in the Appendix to this report.

In the judgment of the Committee, they merit and will repay careful examination, being in curious contrast to the similar contracts entered into in America. As a rule, these foreign concessions are framed with special provision for the ultimate ownership by the municipality of whatever is a part of the streets. In some contracts it is provided that, at the expiration of the term, everything of this sort shall become the property of the municipality, at once and without any payment being made for it, the company during the term of the contract securing itself against loss through a system of amortization; in other cases a measure of compensation is provided, the municipality agreeing to take and pay for the property, in case of inability to agree on a renewal of the concession. In any event, the settled policy is to have everything pertaining to the street and pavement pass into the ownership of the municipality at some not remote future time, leaving the municipality free then to enter into contracts for the operation of the tracks, or to make such other arrangements as it sees fit. But the essential point to which the Committee desires to call attention is the distinction here drawn between the ownership of the pavement, and consequent full control of the street, and the running of the vehicle. The ultimate full control of the street, and exclusive ownership of whatever may be part of its surface, by the municipality, is, it may be said, now accepted in European countries as a fundamental principle of polity.

In the judgment of the Committee, this principle is correct, and could be advantageously incorporated into Massachusetts practice as applying to all street railway companies hereafter organized and locations granted. Even if the concessions in future are not made for a specific term of years, during which they shall be binding contracts to be changed only by mutual consent, — a change the Committee does not advise, — the general law should at least be so modified as to secure in every location hereafter granted a clear, well-considered rule of procedure and compensation, under which the municipalities may, at any time they desire so to do, assume, readily and at an understood and reasonable cost, the ownership of everything appurtenant to their streets.

But it will probably be said that this applies only to franchises hereafter granted, — that Massachusetts is now already well provided with street railways, and that some provision should be made to cover the system already existing. The Committee has given careful consideration to this phase of the problem. Should the question arise on any large scale, — should any particular municipality, for reasons good and sufficient to itself, desire to resume complete control of its streets and pavements, or of any part of them, — the case would, probably, be dealt with individually. The course of procedure would be simple. The municipality would ask of the Legislature a special act, probably framed on the precedents which already exist for the public taking of the property of water or gas light companies, and proceed in the way therein prescribed.

Meanwhile, cases may at any time arise in which local communities, in the care of their public ways, might desire to take over certain tracks in particular streets without necessarily taking over all connecting tracks in other streets, or portions even of the same street. The Committee has framed, and herewith submits, a form of act intended to meet such cases. This act, drawn up on principles already laid down, explains itself. It in no wise disturbs, much less provides for the revocation of, any franchise or location of a street railway company. The franchise is treated as a license to run cars over certain routes in cities or towns, for the public convenience. In the case of a street railway such a franchise no more necessarily involves the ownership of tracks than the license to run a line of omnibuses involves the ownership of the pavement. If, then, under the proposed act, a municipality takes over the tracks in a certain street or streets, by so doing it in no degree impairs either the right or the duty of any railway corporation holding a franchise to run cars, whether through that street or elsewhere. The tracks specified merely pass into the ownership and care of the municipality, the corporation is compensated for them, and thereafter the cars are run over them, the corporation paying trackage to the municipality. The distinction is the familiar one between the omnibus line run by a private company, and the stone or iron pavement owned by a city or town; except that in this case the company, running its vehicles in exactly the same way as before, pays the city or town for the use of a particular species of pavement laid down for its special and exclusive convenience, instead of itself laying down and owning that pavement. In other words, the essence of the franchise, or location, is the right to run vehicles to carry passengers on certain routes, and the laying and ownership of the tracks is a mere incident, and not an essential incident, thereto. The act proposed deals only with the incident; it in no way affects the essence of the franchise. Under its terms, it will hereafter be in the power of any municipality to retain in its own hands full possession and control of those of its streets in which no street railway location has yet been granted, and then gradually, as occasion offers, to extend that possession and control over other streets in which locations have been granted, until the street railway corporation would by degrees be reduced to its original functions, — those of a private company licensed to run public vehicles over specified routes under fixed regulations, and in consideration of certain rentals and other money payments. It would become, in short, an improved omnibus line, run on scientific principles and adapted to modern conditions.

The third line of development remains to be considered, — that known as municipalization. This has been much discussed of late, and in the hearings before the Committee was advocated by some as the best practical solution of the problem; but even its warmest exponents admit that, as respects street railways, municipalization is a most important and far-reaching proposition, yet in the experimental stage. The tendency towards it in Great Britain is pronounced, and, as a system in practical operation, it can now be studied in its tentative stage in Glasgow, in Leeds and in numerous other places. In thus studying it, however, one thought immediately suggests itself to an American. So far as development, activity, and material and scientific appliances and equipment are concerned, apart from permanent way and track surface, the American street railway service is so far in advance of any to be found in Great Britain as not to admit of a comparison. Without exaggeration, it may be said that, while the street surfacing, and merging of track with pavement, are there far in advance of what we ordinarily find in America, all the other appliances and accommodations are either antiquated and positively bad, or recently taken from this side of the Atlantic and installed by

American companies. In other words, in the field of scientific apparatus and mechanical development, America has experimented at immense cost, as our street railway capitalization shows, while Europe has patiently waited, and is to-day rapidly and quietly appropriating the results for which we have paid. As respects municipalization, the conditions are likely to be reversed. Foreign countries, and more especially Great Britain, seem disposed to experiment, and experiment on a very considerable scale; and perhaps it would be wise for America to allow these countries in this matter to bear the cost of so doing, sure of our ability at any time to appropriate all the useful results of foreign experience.

As yet no attempt at the municipalization of street railways has been made in any country on a sufficiently large scale and for a long enough time to be of real significance. Glasgow and Leeds, for instance, are the two European instances more frequently referred to. From the statements often met with in the press, and the assertions heard in discussion, it might well be assumed that the experiments made in these cities amounted to an indisputable and established success; whereas, in point of fact, such is in no degree the case.* So far from being a demonstrated success, it may, on the contrary, be confidently asserted that nowhere, as yet, has the experiment of municipalization of street railways been worked out to any logical and ultimate results whatever, nor can it be so worked out for at least a score of years to come. Even then, political habits, social traditions, and material and economical conditions vary so greatly, and enter to so large an extent into the problem, that it will not be safe to infer that what may have proved safe and practicable in one community is either practicable or safe in another. At the present time, the municipalization of the street railways is not accepted as by any means indisputably desirable in Great Britain, while in Germany it is regarded unfavorably. This last fact is the more noteworthy, as Germany has been the field in which State ownership and management of steam railroads has been developed to the fullest extent, and with results pronounced to be unquestionable, as well as most satisfactory. The grounds for this apparently illogical action and contradictory policy were, during the last summer, briefly set forth to a member of the Committee by the highest German authority. They were purely practical. The State official referred to simply said that Germany had carried officialism as far as, in his judgment, it was prudent to go. The government employees tended always to increase; and there, as here, it was found that employment by the government signified much which did not at once appear. The line had to be drawn somewhere; and it was not considered expedient to add to the number already existing the numerous officials and employees of all the street railway systems in the Empire.

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* Those seeking further information on this subject are referred to a very interesting, as well as instructive, paper submitted to the committee by Robert P. Porter, superintendent of the United States Census of 1880, printed in the Appendix to this report.

So far as Massachusetts is concerned, the Committee apprehends that grave difficulties of a practical as well as theoretical character would present themselves, should a serious attempt be made at the complete municipalization of street railways. The public ownership of tracks in the streets, like the control of the streets, is a simple matter. Each municipality might own those in its own streets, or in a portion of its own streets, and a private company could run vehicles over the tracks, whether belonging to itself or to the public, in one or several cities and towns. It would be merely a matter of arrangement and contract. Not so municipal operation. It is necessary again, in this connection, to observe that the larger individual street railway systems are in Massachusetts rarely, if indeed ever, confined to one city or town; the largest of those systems — the West End — holds franchises from and locations in no less than eleven different towns and cities, and the Lynn & Boston in nineteen. Under these circumstances, complete municipalization obviously becomes a difficult problem. It is not supposable that one town or city could own, as well as operate, not only tracks but the buildings and appliances involved in the operation of tracks, in a number of adjacent cities and towns. For instance, complications could hardly fail to arise were the city of Somerville to decide to municipalize its street railways, and operate them as distinct in every respect from the system which served all the adjacent cities and towns; while, on the other hand, it is scarcely probable that Somerville would care to own lines of its own in all those cities and towns, or, if she did, that those cities and towns would regard the scheme with complacency. A community of action through some common organization would, therefore, have first to be devised. Though obviously a necessary preliminary, this, in itself, is an intricate problem, to the solution of which the Committee has not felt called upon to address itself. Should it arise, it will have to be dealt with under conditions not now apparent, and by the Legislature itself.* The existing law does not provide for it; nor, in the light of the investigations it has made, is the Committee prepared to suggest any alterations of the law in this respect.

One subject, specially referred to in the act creating the Committee, remains for consideration. The Committee was directed to consider and report whether any uniform system of taxation should be adopted as applying to the street railway companies. This does not specifically raise the question of the disposition to be made of the taxes, already under the existing law collected from the street railway companies in common with all other corporations. That subject has, however, heretofore been considered, and notably by the Boston Rapid Transit Commission of 1891, and the Joint Special Tax Committee of 1892. Both of these bodies, for reasons stated in their reports, extracts from which will be found in the Appendix (pages 000–000), recommended an exception to the general rule in the case of street railways, and the payment of the corporation tax levied upon them to the towns in which the companies operated lines, instead of to the towns in which the holders of the stock resided. A bill to this effect was introduced in the Legislature of 1893, passing the House of Representatives by a large majority, but failing in the Senate by a single vote. The considerations in favor of such a disposition of this tax advanced in the two reports referred to commend themselves to the judgment of the Committee, and the change has been incorporated in the form of act herewith submitted.

So far, however, as a further special street railway franchise tax is concerned, grave popular misapprehension seems to exist as to the burdens in the way of taxation to which street railway companies are already subject, — a misapprehension due in no inconsiderable degree to the indirect and anomalous character of those burdens. It seems to be generally assumed that the street railway companies received, and are now receiving, public franchises of unusual value, for which they pay no money consideration and render very inadequate public service; that their profits consequently are inordinately large is also assumed, and that those profits are in some way concealed through a system of vicious financiering and deceptive book-keeping.

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* A form of law devised to obviate this difficulty, by providing for the joint ownership of street railway tracks, and their operation, by a number of municipalities, was introduced into the Legislature of 1897, and was printed as House No. 774 in the legislative documents of that year.

The facts, however, do not seem to be as assumed in this presentation of the case. A more careful investigation fails to disclose those Massachusetts franchises of great value given away without consideration, or unduly large profits on the part of the companies as a whole, or more than exceptional cases of vicious financiering, or a deceptive general system of book-keeping. There are in all 77 street railway companies in operation in the Commonwealth. Of these, one, the Boston Elevated, or West End, Street Railway, may be left out of consideration, its case being exceptional to such a degree as to make it necessary to put it in a separate class, as has in fact been done through recent legislation (Acts 1897, chapter 500). Of the 76 remaining active companies, 34 paid no dividends in 1897, while 42 paid dividends of from 1.25 to 10.5 per cent., averaging 4.29 per cent., — a return certainly not excessive. Upon this point the inquiries of the Committee tend to confirm the conclusions of the Board of Railroad Commissioners in their report for 1896 (page 110). While in the business of operating street railways, as in every other business, there are — as, within reasonable limits, there should be — exceptional cases of large profit offsetting cases of failure to earn reasonable profits, yet the idea sometimes entertained that the electric railway is likely to prove a source of extraordinary or abnormal profit must apparently be abandoned. "It is a close business, yielding with skilful and prudent management only a fair average return, quite within the limit allowed by statute and conservative opinion as adequate and proper for investments of this character." *

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* The large increase in the operations of the street railway companies, due to the application of electricity, has occurred almost wholly since 1893. The following table

But it is often alleged that the capitalization of the companies is excessive and fictitious, and that, if measured by actual cost, the percentage paid in dividends is deceptive. This is a difficult question to decide ; but the laws of Massachusetts as to capitalization have been strictly drawn and rigidly administered, nor has any evidence been adduced showing that they have been peculiarly ineffective. On the contrary, using round numbers only, the capitalization per mile in stock and bonds ($46,600) is less in Massachusetts than the average ($49,500) in the New England States, not a third of what it is in New York ($177,800) or half what it is in Pennsylvania ($128,200), less than half what it is ($94,100) in the United States as a whole; and it is less than that in Great Britain ($47,000), where both construction and appliances are far less costly and elaborate, and over-capitalization has been guarded against with the utmost care. The truth of this allegation in the case of the Massachusetts street railway companies remains, therefore, to be demonstrated, the weight of attainable evidence being distinctly the other way.

The Committee has already discussed what may be termed the special contributions made by the street railway companies to the cost of paving and the removal of snow and ice, and also to their participation in the cost of certain street widenings ; and schemes of law are herewith submitted, looking to the better regulation of these matters. The changes therein recommended by the Committee are in main part commutations of burdens already imposed from payment by work to

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shows the percentage of net earnings of the street railway companies of Massachusetts, exclusive of the West End Company, to their capital investment for each of the five years specified, and for the whole period. It will be observed that, without any provision being made for a reserve fund, the average profit on the capital invested has, during the whole period, averaged a trifle only above 6 per cent. per annum.

	Capital Investment.	Net Earnings.	Percentage of Earnings to Investment.
1893, ...	$24,343,010	$1,256,647	5.16
1894, ...	26,341,333	1,400,912	5.32
1895, ...	29,147,714	1,983,248	6.80
1896, ...	33,878,948	2,273,552	6.71
1897, ...	37,230,924	2,405,904	6.46
Average for five years, ...	. . .	. . .	6.16

payment in money; the present proposition is of a different nature. It looks to the imposition on street railway companies of a special franchise tax. The idea of such a tax is not new. The draft of a proposed act providing for one was specially referred for consideration to the large and exceptionally able Rapid Transit Commission of 1892, already referred to, and the portions of the report of that commission relating to the subject are printed in the Appendix.

The Committee concurs in the general conclusions on this subject reached by the Rapid Transit Commission. The system of taxation of corporate franchises in use in Massachusetts is well defined, and, in general, works satisfactorily. All corporations, including street railway corporations, pay to the State their proportionate share of the general taxes according to the market value of their capital stock, which is perhaps the best index of their ability to contribute. The distribution of this tax is a distinct question, and, so far as the street railways are concerned, has already been discussed. Aside from the matter of distribution, there seems to the Committee no sufficient reason to suggest any additional taxation of street railways except in the following particular. It is a well-recognized principle in the treatment of street railway and other public service corporations in Europe, as well as elsewhere, to provide that, after the owners and organizers have received a reasonable return upon their enterprise and investment, any excess of profits over and above a fixed amount should in part be paid to the government in the nature of a franchise tax. This principle commends itself to the Committee. It is not subject to the criticism, which appears to be sound, that a limitation of dividends hampers enterprise and improvement. Where a corporation is not limited in the amount of dividend it may earn, but is simply required to pay over a sum equal to the excess of dividends actually paid over a fixed and reasonable percentage on its capital stock, it will be constantly spurred to render such service that its profits will increase. Being a public service corporation, owned and operated for private profit, it seems just and in accordance with sound principles that, when the private ownership has received a reasonable return upon its investment, the public should share, through a form of special taxation, in the increment of profit, provided it can do so without the danger of offering an inducement to those in control of the property to stint or conceal their profits. A provision to this effect is incorporated in the draft of the act herewith submitted, similar in its general character to that recommended by the Rapid Transit Commission of 1892. (Report, pages 119, 124, 281.)

Respectfully submitted,

CHARLES FRANCIS ADAMS.
WM. W. CRAPO.
ELIHU B. HAYES.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Ninety-eight.

AN ACT

Relative to Street Railways.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. In the construction of this act, unless such meaning would be repugnant to the context, "street railways" and "railways" shall mean all railways, including tracks, poles, wires, and other appliances and equipments connected therewith, which are constructed on, in, under or above the public highways or streets, and operated by any motive power other than steam. "Street railway companies" and "companies" shall mean all corporations, persons, partnerships or associations constructing, maintaining or operating street railways.

SECTION 2. In the case of street railway companies, the return to the tax commissioner under the provisions of section thirty-eight of chapter thirteen of the Public Statutes shall also contain a statement under the oath of the treasurer of every such company giving the length of the tracks operated by it in each city and town in the

Commonwealth on the thirtieth day of September next preceding the date of the return, which length shall be determined by measuring as single tracks the total length of all tracks operated by such company, including sidings and turn-outs, whether owned or leased by it, or over which it has trackage rights only; and said return shall also contain a statement under the oath of the treasurer of every such company showing the amount of the capital stock of the company and of the dividends paid thereon during the year ending on the thirtieth day of September last preceding and during each and every year from the organization of the company.

[Sections 2, 4 and 5 relate solely to the disposition to be made of the franchise tax collected from street railway companies, in common with other corporations, under laws now in force. This tax is now paid into the State Treasury, and then paid over to the cities or towns in which the owners of the stock of the companies reside, or, in the case of non-resident stockholders, retained in the Treasury. For reasons set forth in the report (page 35), it is now proposed, by means of the sections named, to make an exception to the general rule in the case of street railway companies, and to pay the corporation tax collected from them over to the cities or towns in which the tracks operated by those companies are situated, and from which their revenues are derived, instead of to the cities or towns in which the owners of the stock reside. This matter was specially referred to by the Rapid Transit Commission of 1891 (Report, pages 116–119, 281), and by the Joint Legislative Special Tax Committee of 1893 (Documents, 1894, Senate, No. 9, pages 27–29). It is alluded to in the report of the Tax Commission of 1897, recently published (pages 76–77), but no recommendations in regard to it were there made. It was discussed during the hearings before the Committee. That now recommended has been recognized by the Legislature as the proper rule for distribution in the case of the street railways included in the so-called West End, or Boston Elevated, system (Acts 1897, chapter 500, section 10), and is now, by the foregoing section, made of general application.]

SECTION 3. Whenever a street railway company has paid during the year ending on the thirtieth day of September next preceding the date of the return referred to in section two of this act, dividends exceeding in the aggregate eight per centum upon its capital stock, said company shall, for every such year, in addition to the tax upon its corporate franchise for which it is liable under the provisions of chapter thirteen of the Public Statutes, pay to the treasurer of the Commonwealth a tax equal to the amount of such excess: *provided, however*, that no company shall be liable to pay such additional tax which has not from the date of its organization paid dividends equivalent in the aggregate to at least six per centum per annum upon its capital stock from year to year. Said tax shall be determined and paid in the manner provided in said chapter thirteen in relation to taxes upon the corporate franchises of street railways.

[Section 3 provides for a special franchise tax in addition to the regular corporation tax now assessed on street railways. (In regard to this proposed additional tax, see Report, pages 37–39; Report of Rapid Transit Commission of 1891, pages 119, 281–283; Acts 1897, chapter 500, section 10.) While imposing in certain cases, and under special conditions, a further franchise tax on street railways, the foregoing section merely extends the principle of taxation contained in the Boston elevated railway act of 1897 (chapter 500, section 10) so as to include, as far as conditions warrant, the other street railway companies of the Commonwealth.]

SECTION 4. Prior to the first day of November in each year, the tax commissioner shall apportion the amount of the tax for which each street railway company is liable under the provisions of chapter thirteen of the Public Statutes, and under the provisions of section three of this act, among the several cities and towns in proportion to the length of tracks operated by such company in said cities and towns respectively, subject to appeal to the board of appeal constituted by sections sixty-one and sixty-two of said chapter thirteen. The tax commissioner shall notify the treasurers of every such city and town of the share of said tax so apportioned to each city and town, and he shall also certify to the treasurer of the Commonwealth the shares thus apportioned as finally determined in case of appeal.

[See note to section 2.]

SECTION 5. As soon as practicable after the receipt of said tax and of the certificate of apportionment thereof by the tax commissioner, the treasurer of the Commonwealth shall credit and pay over to the treasurers of the several cities and towns the shares of said tax apportioned to them respectively as aforesaid.

[See note to section 2.]

SECTION 6. Every street railway company shall on or before the fifteenth day of October in each year make and file in the office of the board of assessors of every city and town in which any portion of the railway operated by it is situated, a return signed and sworn to by its president and treasurer, stating the length of tracks operated by it in such city or town, and also the total length of tracks operated by it, determined as provided in section two of this act, and also the amount of its gross receipts during the year ending the thirtieth day of September next preceding, which gross receipts shall include all amounts received by it from the operation of its railway, but shall not include income derived from other sources.

[Sections 6 to 11 inclusive relate to the same subject. The considerations on which they are based are discussed in the Report, pages 26-28. Certain burdens in the way of street paving, clearing of ice and snow, etc., now imposed on the street railway companies in labor, etc., are commuted into their fair equivalent in money payments. The sections are designed to restore to the cities and towns complete control of their streets and responsibility for their condition, while providing for money payments from the companies equal to the cost of the work in connection with streets done by them under all provisions of law now in force.]

SECTION 7. On or before the first day of November in each year, the assessors of every city and town in which any street railways are operated shall assess on each company operating such railways therein, a tax of an amount equal to such proportion of the following percentages of the gross receipts of such company as the length of tracks operated by it in such city or town bears to the total length of tracks operated by it, to wit: —

In case of companies whose annual gross receipts per mile of track operated are seven thousand dollars or less, two per centum of the total annual gross receipts; in case of companies whose annual gross receipts per mile of track operated are more than seven thousand dollars and less than fourteen thousand dollars, two and one-quarter per centum of the total annual gross receipts; in case of companies whose annual gross receipts per mile of track operated are more than fourteen thousand dollars and less than twenty-one thousand dollars, two and one-half per centum of the total annual gross receipts; in case of companies whose annual gross receipts per mile of track operated are more than twenty-one thousand dollars and less than twenty-eight thousand dollars, two and three-quarters per centum of the total annual gross receipts; and in case of companies whose annual gross receipts per mile of track operated are twenty-eight thousand dollars or more, three per centum of the total annual gross receipts.

The tax provided by this section shall be in addition to the taxes now provided by law.

[See note to section 6.]

SECTION 8. Prior to the fifteenth day of November in each year, the assessors of every city and town shall notify the collector of taxes in such city or town of the amount of the tax assessed therein on every street railway company under the provisions of section seven of this act, and the collector shall forthwith notify the treasurer of every such street railway of the amount of the tax so assessed on it. Said tax shall become due and payable to such city or town within thirty days from the receipt by such company of said notice of the amount of said tax.

All the provisions of law relating to the collection of taxes on property taxed locally, so far as the same are applicable, shall apply to the tax assessed under said section seven.

[See note to section 6.]

SECTION 9. All amounts paid to cities and towns under the provisions of sections five and eight of this act, shall be treated by such cities and towns as a separate fund, and shall be applied to the construction, repair and maintenance of the public ways within such cities and towns.

[See note to section 6.]

SECTION 10. Street railway companies shall not be required to keep any portion of the surface material of streets, roads and bridges in repair; but whenever the same is disturbed by reason of the original construction or subsequent alteration or extension of any railway, or by reason of any repairs or renewals of any railway or any part thereof, the company owning or operating such railway shall at its own cost renew and replace said surface material with the same form of construction, or with such other form as the superintendent of streets, or other officer exercising like powers, shall approve, and shall restore the same to as good condition as the same was at the time of such disturbance. Every street railway company shall be liable for any loss or injury that any person may sustain by reason of the carelessness, neglect or misconduct of its agents or servants in the construction, alteration, extension, repair or renewal of its railway, or in the renewal or replacing of the surface of the streets disturbed as aforesaid.

[See note to section 6.]

SECTION 11. Street railway companies may clear snow from their tracks in such manner as may be approved by the superintendent of streets, or by any other officer exercising like powers, and shall, under the direction of such superintendent or officer, level the snow thrown upon the streets by them so as to make the highways safe for public travel; but they shall not be required to remove from the streets snow displaced in clearing their tracks as aforesaid.

[See note to section 6.]

SECTION 12. The board of aldermen of a city or the selectmen of a town, upon the petition for an original location of tracks in such city or town by the board of directors of a corporation organized under the provisions of sections two to six inclusive of chapter one hundred and thirteen of the Public Statutes, or under a special legislative act, shall give notice to all parties interested of the time and place at which they will consider such petition, at least fourteen days before the meeting of such board or selectmen for considering said petition, by publication in one or more newspapers published in said city or town, and if none such is published then by publication in one or more newspapers published in the county in which said city or town is located; and after hearing, if in their opinion public convenience and necessity require, they shall grant said location or any portion thereof. In granting said location, they may prescribe the manner in which said tracks shall be laid, and the kind of rails, poles, wires and other appliances which shall be used, and they may also impose such other terms, conditions and obligations in addition to those applying to all street railways under the general provisions of law, as the public interest may in their judgment require; and the location thus granted shall be deemed and taken to be the true location of the tracks of the railway, if an acceptance thereof in writing by said directors is filed with said board of aldermen or with said selectmen within thirty days after receiving notice of the granting of the location.

If either the majority in value as determined by the last preceding assessment for taxation, or not less than ten in number, of those owning real estate abutting on any public way in which a location of a street railway has been granted shall, within thirty days after the granting of such location, file a written protest with the board of railroad commissioners, such location shall not be valid so far as such way is concerned until approved by the board of railroad commissioners after public notice and a hearing. No company shall commence construction under an order of a board of aldermen or of selectmen granting a location as aforesaid until the expiration of the time in which such protest may be filed with said board of railroad commissioners, nor, in case such protest is so filed, until said board of railroad commissioners has taken final action thereon approving the same.

[The first paragraph (lines 1–29) of section 12 modifies the existing law regulating the grant of locations only in so far as is necessary to make it conform to the interpretation of that law which has in practice grown up (see pages 22 and 23 of the Report). The second paragraph (lines 30–46) is discussed, and grounds on which it is recommended are set forth, on page 25 of the Report.]

Section 13. The board of aldermen of a city or the selectmen of a town, upon the petition of the board of directors of a street railway company whose tracks are located in said city or town, and after notice and hearing as provided in section twelve of this act, may grant a location for the extension of the tracks of such company and prescribe the manner in which said tracks shall be laid and the kind of rails, poles, wires and other appliances which shall be used; but they shall not impose as terms or conditions of such grant any obligations other than or in addition to those applying to all street railways under the general provisions of law, except such as were imposed in the original grant of location. The provisions of section twelve of this act as to acceptance, and as to protest of abutters and approval by the board of railroad commissioners, shall apply to grants of extensions under this section.

[Section 12 provides for original grants of locations, and section 13 for extensions of locations under grants already made. The purpose of the section is to put a restriction on the tendency of local boards to take advantage of the public necessity for some extension to impose on companies new, and perhaps unreasonable, burdens and restrictions, not contained in the original grant, or provided by the general laws (see Report, page 23)]

SECTION 14. The board of aldermen of a city or the selectmen of a town, upon the petition of the board of directors of a street railway company whose tracks are located in said city or town, or upon the petition of any interested party, after notice and hearing as provided in section twelve of this act, may alter the location of tracks of said company in the manner and subject to the provisions contained in section thirteen of this act. Such alterations shall be made by the company within such time, and the expense thereof shall be borne by such party, as the board of aldermen or selectmen may determine.

[The foregoing section is intended to provide for alterations of locations, as distinguished from original grants and from extensions, provided for in the two previous sections (sections 12, 13). It is framed on the same principles as those sections.]

SECTION 15. The board of aldermen of a city or the selectmen of a town, after the expiration of one year from the opening for use of a street railway in their city or town, if the interests of the public require, may order that the location of any tracks shall be revoked; but no revocation of a location of a street railway shall be valid until approved by the board of railroad commissioners after public notice and hearing, unless the company consent thereto in writing within thirty days after such order of revocation. Upon revocation as aforesaid, the company shall remove the tracks in conformity with the order of revocation, and shall put the portion of the surface of streets disturbed by such removal in as good condition as the adjacent surface of said streets. If the company neglects to execute such order after thirty days' notice thereof, the board of aldermen or selectmen may cause the same to be executed and the work done at the expense of the company, to be recovered in an action of tort.

[Section 15 relates to the revocation of locations by local boards. The subject is discussed, and the principles upon which this section is framed are set forth in the Report, pages 17–21, 23–25 (see also the Twenty-seventh Annual Report of the Board of Railroad Commissioners (1896), pages 110–113).]

SECTION 16. Street railway companies may provide cars for special service and may make special rates therefor. They may furnish free transportation for their own employees, for policemen and firemen in uniform, and for children under five years of age. They may also on the request of charitable associations furnish free transportation for children's excursions, and they may make special rates for pupils in day and evening schools; but they shall not give free tickets or passes to any municipal official or to any person in the employ of any city or town, nor shall they transport over their lines for less than the established fare any persons except as hereinbefore authorized. The violation of the provisions of this section by a company may be alleged as a misdemeanor in any hearing before the board of railroad commissioners, upon appeal from an order of a board of aldermen or of selectmen revoking the location of such company, and if the board of railroad commissioners in its discretion so decides, shall constitute valid and sufficient ground upon which to approve of the revocation of such location or any portion thereof.

[The foregoing section has been framed in the interest of both the public and the street railway companies. It is intended to put a stop to a recognized existing abuse from which public as well as corporate interests are believed to suffer. The usual penalty in such cases has not been imposed, for the reason that its inefficiency has been established by experience.]

Section 17. Whenever a street or highway in which there are no street railway tracks located, is widened under the provisions of chapter fifty-one of the Public Statutes by an order declaring the widening to be rendered necessary for the public convenience for the purpose of granting a location of street railway tracks therein, as prayed for by a pending petition for such location, a proportionate share of the expense of such widening may be assessed upon a street railway company whose tracks have been located in said street or highway so widened, provided the amount of such assessment, in addition to the amounts assessed on real estate, shall not exceed the total cost of said widening.

[Sections 17–20 are recommended for the reasons set forth on pages 25 and 26 of the Report. In cases where streets are widened in order that the tracks of a street railway may be

located in them, it would seem obviously just that the company should be empowered to assume such portion of the cost of widening as may be agreed on between the parties in making the location; and that the money so invested should be treated as part of the construction account of the street railway company, and included in its capitalization On the other hand, where, at the expiration of a reasonable period after a location has been granted, the street widening is made necessary either by the presence of railroad tracks or by increased traffic, the railway company, as enjoying a franchise practically exclusive for the carriage of passengers through the street in question, derives presumably a direct resulting benefit from the widening proposed. For the reason stated in the Report (pages 25, 26), therefore, it would seem just that the franchises of street railway corporations should be assessed for betterments on the same principle as the adjacent real estate, and the community at large For reasons already stated, this payment also should be regarded as in the light of a construction investment, and provision made for the issue of capital stock against it]

SECTION 18. Whenever a street or highway in which the tracks of a street railway company have been located for a period of five years is widened under the provisions of chapter fifty-one of the Public Statutes by an order declaring the widening to be in part rendered necessary for the public convenience on account of the location of said tracks, a proportionate share of the expense of such widening may be assessed upon said street railway company, provided that no such assessment shall exceed the aggregate amount of all the betterments assessed upon real estate, and that no such assessment shall exceed one-quarter of the total cost of said widening.

[See note to section 17.]

SECTION 19. The provisions relating to notice, time of payment, interest, appeal by party aggrieved, and all other provisions of chapter fifty-one of the Public Statutes and of all laws relating to the assessment of betterments on real estate, so far as the same are applicable, shall apply to assessments made under the provisions of sections seventeen and eighteen of this act. Said assessments shall be collected in the manner provided for the collection of taxes assessed locally.

[See note to section 17.]

SECTION 20. Under the provisions of law relating to the increase of capital stock of street railway companies, a street railway company may issue capital stock to the amount which may be paid by it under the provisions of sections seventeen and eighteen of this act.

[See note to section 17.]

SECTION 21. The board of aldermen of a city or the selectmen of a town in which a street railway is located may apply to the board of railroad commissioners, who, after due notice to the parties interested and a hearing, may revise and regulate the fares established by said company; but such fares shall not, without the consent of the company, be reduced below the average rate of fare charged for similar service by other street railway companies, which, in the judgment of the board of railroad commissioners, are operated under substantially similar conditions.

[Section 21 is proposed as a substitute for section 44 of chapter 113 of the Public Statutes, which relates to reduction of fares, but provides that no reduction shall be made without the consent of the company, by which fares shall "be so reduced as to yield, with all other profits derived from operating its road, an income of less than ten per cent. upon the actual cost of construction," etc. The law as it stands tends to defeat itself. Circumstances can be readily imagined in which the growth of traffic is prevented by an unreasonable scale of fares. The company operating the street railway may not earn ten per cent. upon the cost of construction, for the very reason that the growth of traffic is impeded by the scale of fares charged. Nevertheless, under the existing law it would seem to be impossible to reduce those fares. The measure for what constitutes reasonable fares here proposed is that now in practical use, which it is thus sought to incorporate into the law in place of the old rule above referred to, which is either inoperative, or open to the objection stated.]

SECTION 22. Sections fifty-seven and fifty-eight of chapter thirteen of the Public Statutes, so far as said sections relate to the distribution of taxes assessed and collected upon the corporate franchise of street railway companies; section thirty-two of chapter one hundred and thirteen of the Public Statutes; so much of section twenty-seven of said chapter one hundred and thirteen as relates to the removal of snow and ice; and sections seven, twenty-one, twenty-two, twenty-three, twenty-four, forty-four and forty-five of said chapter one hundred and thirteen and all other acts and parts of acts inconsistent herewith, are hereby repealed.

SECTION 23. This act shall take effect on the first day of October in the year eighteen hundred and ninety-eight, except as to sections six and seven, and, as to those sections, this act shall take effect on the first day of October in the year eighteen hundred and ninety-nine.

[Under the foregoing section, two different periods have been fixed for this act to take effect. So far as it relates to the distribution of taxes or the imposition of new taxes, and in other miscellaneous respects, it is proposed that it shall take effect at the close of the present street railway year, the taxes assessed during the current year being paid over to cities and towns, in accordance with the provisions of sections 2-9. As the commutation tax provided for in sections 6 and 7 affects, to a greater or less extent, the methods of book-keeping, etc., of the companies, these sections are not to take effect until the first of October, 1899, thus giving the companies an opportunity to change their methods of accounting on the first of October next after the passage of the act, so as to make them conform to its provisions]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Ninety-eight.

AN ACT

To authorize Cities and Towns to construct Tracks of Street Railways in Public Ways, or to acquire the Same.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Any city or town may construct street railway tracks in any public way within the limits of such city or town, or put down such tracks as part of the street pavement thereof, whenever it may adjudge public convenience requires. Such tracks shall be maintained and kept in repair like other portions of the streets or ways in which they are laid, and any street railway company may run cars over the same with the consent of the proper authorities of such city or town, and upon such terms and regulations as may be mutually agreed; but nothing contained in this act shall be held to authorize towns or cities to run cars upon such tracks, as otherwise to operate street railways.

SECTION 2. Any city or town may take and possess the tracks, poles and fixtures located in any street or public way of such city or town, and constituting part of the surface or substructure of such street or way, when owned by any street railway company, upon giving to such company six months' notice in writing of its intention so to do; but such taking shall not constitute a revocation in whole or in part of the location of such street railway company, or affect its obligations or right to run cars over the tracks so taken.

SECTION 3. Compensation for all property taken under the foregoing sections shall be paid by the city or town to the company owning the same, such compensation to be ascertained in the manner now provided by law in case of the taking of property for the laying out or widening of streets; but such compensation shall not exceed in amount the actual value of the property as measured by the estimated cost of replacing the same in its condition at the time of the transfer of possession.

SECTION 4. After the taking and transfer of possession of street railway tracks as provided in the two preceding sections, the railway company or companies holding locations in such street shall have the right and be under obligation to run cars over the said tracks in the manner provided in their franchise, but they shall, in addition to all payments otherwise provided by law or special agreement, pay a further sum for the use and maintenance of the tracks and fixtures so taken, to be from time to time fixed by mutual agreement for periods not exceeding seven years during the continuance of the franchise; and, in case the parties are unable to agree on the amount of the sums to be so paid, such amount shall be fixed by the award of three referees to be appointed by the supreme judicial court on the petition of either party after thirty days' notice in writing to the other party or parties concerned. The award of said referees shall be based on the payment of interest on the actual cost of the tracks in question, together with a reasonable allowance for the repair and renewal of the same, but shall include no other items and no additional franchise tax; and it shall continue in force for the period of seven years, unless set aside by a revocation of locations, or altered by mutual consent.

[See Report, pages 29-32; also Sixth Annual Report of the Board of Railroad Commissioners, January, 1875, pages 23-25, 67. Section 1 of the foregoing act applies to the case of street railroad companies hereafter incorporated and locations granted. Section 2 provides for the taking over of tracks in locations already granted. Sections 3 and 4 establish the rule of compensation in case of the taking over by municipalities of the tracks of street railway companies.]